

DAVIAULT



MONTREAL 1780

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**REPORT**  
**OF**  
**THE TRIALS**  
**OF**  
**CHARLES DE REINHARD,**  
**AND**  
**ARCHIBALD M'LELLAN,**  
**FOR MURDER,**  
*At a Court of Oyer and Terminer,*

**HELD AT**  
**QUEBEC.**

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**MAY 1818.**

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**FROM MINUTES TAKEN IN SHORT-HAND, UNDER THE SANCTION OF  
THE COURT.**

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**MONTREAL :**

**PRINTED BY JAMES LANE AND NAHUM MOWER.**

**1818.**



## INTRODUCTION.



It is necessary to state a few facts, and offer a few remarks, as a preface to the trials at Quebec of Charles De Reinhard and Archibald M'Lellan, of which the following pages contain a report as taken by a short-hand writer under the sanction of the Court.

In the March term of the Court of King's Bench for Montreal, 1817, an indictment was preferred and found against Charles De Reinhard, Archibald M'Lellan, Cuthbert Grant, and Joseph Cadotte, for the murder of Owen Keveny. De Reinhard was sent down from the Upper Country by the Commissioners (see Mr. Coltman's evidence, page 353,) in the summer of that year, and M'Lellan, Grant, and Cadotte came down in the fall, and all four were committed to prison. At a Court of Oyer and Terminer held at Montreal in the month of February following, an indictment for the same offence was likewise preferred and found against François Mainville, and Jean Baptiste Desmarais, half-breeds, and against Néganabines, (the son of the white partridge,) commonly called José, or Joseph, an Indian. Mainville, who was in custody of the party who had charge of M'Lellan, had previously made his escape at Point au Tonnerre, in lake Superior; and Desmarais and the Indian had been brought down as witnesses, prior to their being indicted, as appears in

the course of Mr. Coltman's examination on the trial of M'Lellan, p. 120, *et seq.* At that Court of Oyer and Terminer, however, the trials of the four persons who were then in custody were not brought on; and in the ensuing term of the Court of King's Bench at Montreal, which commenced on the first of March, 1817, they demanded their trials; but the Attorney-General then refused to bring them on, assigning as a reason that the prejudices existing in the district of Montreal, occasioned by the publications on the one side and on the other, on the subject of the disputes between the North-West and Hudson's Bay Companies, with which these causes were supposed to be connected, were such as to induce him to represent to the government that justice both to the Crown and to the individuals accused, required that these trials should be held elsewhere, where impartial juries could be selected:

The four prisoners were accordingly removed to Quebec; and in the Court of King's Bench there, fresh indictments were preferred against them, but the grand jury found a *true bill* against De Reinhard and M'Lellan only, and returned *no bill* against Grant and Cadotte. The two former were in consequence put upon their trials jointly on the 30th of March. During that and the next day the proceedings went on, but on the 31st, towards the close of the day, it became evident that; so far from the trial being capable of being completed by twelve o'clock at night, the period when the functions of the Court would terminate, (the session being limited by the Provincial Act, 34 Geo. III. c. 6. commonly called the Judicature Act, to the last ten days of the month of March,) not even the evidence for the Crown could be gone through. It was therefore proposed by the Attorney-General, and consented to on the part of



the prisoners, that a juror should be withdrawn, which was done, and those proceedings were thus quashed.

The main substance of these previous incipient proceedings just alluded to being to be found in the subsequent trials in May and June, it is only needful to give an outline of them.

After the prisoners had been arraigned, and had pleaded Not Guilty, an argument took place on the motion made by Mr. Vanselson, counsel for the defence, that the witnesses should withdraw, which not occurring at the subsequent trials, it may be proper to present entire.

*Attorney-General.*—This is most certainly a singular proposition, and one that the prisoners are by no means entitled to.

*Mr. Stuart.*—It is a privilege to which the prisoners are entitled, it is their right, and we must avail ourselves of it, for this is no time for courtesy.

*Attorney-General.*—It is not a matter of right belonging to the prisoners, nor does the granting or refusing the application at all affect the case. There are in Court a number of gentlemen, magistrates and others, who, from their official situations, become evidences in this case. Can it be necessary, for the justice of the case, that they should be ordered to withdraw? I can see no reason for it. But the learned gentleman urges it as the right of the prisoners, which it is not. It is a right inseparable from the officers of the Crown, and, when applied for on behalf of the prisoners, usually assented to on the part of the Crown, and it should be in the present instance, if the justice of the case would be one tittle promoted by so doing. The witnesses in Court are principally my Lord Selkirk, and gentlemen, to whom it can not be imputed that the justice of the case would be at all influenced by their remaining in Court.

*“ Mr. Stuart.—*That is a point upon which we, as being most interested, must be permitted to judge, and we consider it essential to the defence of these gentlemen, who are charged with no less a crime than murder, that the witnesses on the part of the Crown should not be present in Court during the examination of the evidence.

*“ Attorney-General.—*I submit that, there being no cause for such a procedure, these gentlemen ought to be permitted to remain in Court. What effect, for instance, can my Lord Selkirk's remaining in Court have upon his evidence? or how can the magistrates who are to prove depositions, &c. or those gentlemen who are to prove the locality of the place, be possibly influenced by remaining in Court?

*“ Chief Justice Sewell.—*What are these gentlemen and my Lord Selkirk to prove? The facts of the murder, or the locality of the place?

*“ Attorney-General.—*I shall use my Lord Selkirk as a magistrate before whom depositions have been taken. I may also use him to prove other circumstances of the case. I do not know that I am bound to say for what purpose I may produce my Lord Selkirk, or any other witness.

*“ Mr. Stuart.—*The uniform practice of all criminal courts is that the witnesses are not permitted to remain in Court if the objection is made, and we make it.

*“ Chief Justice Sewell.—*I can not say that, Mr. Stuart, I can not say that it is the uniform practice to put magistrates out of a Court of Justice.

*“ Mr. Stuart.—*It is as far as my knowledge of criminal law extends, and I am surprised that it should have been objected to on the part of the Crown in the present case. For what benefit can it be to the Crown that its witnesses should remain in Court?

*Chief Justice Sewell.*—That is a point on which they must judge.

*Mr. Stuart.*—The evidence to be produced by these gentlemen consists of documents of the most important nature, and they may have been obtained under circumstances which entitle them to no credit. The supposed innocence and impartiality of persons before whom they have been taken or by whom they have been obtained, may be contradicted. It may perhaps be made to appear that they have been obtained under a hope or expectation of reward, through promises, or under fear, through threats. I submit that if ever there was a case in which it was requisite for the cause of justice that all witnesses should withdraw, this is it. A case with which the feelings of another district are so connected that the public prosecutor has declared he could not try it with safety. Documents the most important have been taken before my Lord Selkirk, who can not be separated from the case, and we ought not to be placed in a situation to increase the difficulty of proving any part of our case.

*Chief Justice Sewell.*—We should be sorry, very sorry, that the prisoners should be deprived of the smallest degree of their right. Nor would we, if their interests were affected by it in the most remote manner, hesitate to grant the application of their counsel, but really we do not see that any evil can result from withholding it.

*Mr. Stuart.*—I ask it as a matter of right on behalf of the prisoners, that the witnesses be ordered to withdraw.

*Chief Just. Sewell.*—Mr. Stuart, I can not do so.

*Mr. Justice Perrault.*—In order to remove all difficulty, could you not examine Lord Selkirk first? I suppose there would be no objection to his being present in Court after that.

“*Chief Justice Sewell.*—Yes, they could do that; the gentlemen, however, have most judiciously retired of themselves, and there the subject ends.”

The Attorney-General then opened the case to the jury, and was followed by the Solicitor-General; it being claimed as a privilege of the Crown, for both to address the jury, if they deemed it expedient.

The honourable Wm. Bachelor Coltman, Colonel Bouchette the Surveyor-General, and Samuel Gale, Esquire, were then examined as to the geographical position of the Dalles, and the boundaries of Upper Canada. They were followed by Hubert Faille, whose examination lasted the greater part of that day.

At the close of his examination, and when Jean Baptiste La Pointe was called, the Chief Justice observed that if any other witness was examined it must be one whose testimony would be a short one, which he did not suppose would be the case with La Pointe, as neither the bench nor the jury could undergo at that late hour the fatigue of a long examination. It was however found that, upon hearing La Pointe called, and knowing that his evidence would occupy a very considerable time, all the other witnesses had gone away; whereupon the Chief Justice said, “We can not take this witness, for if we begin with him we can not avoid finishing his evidence. We will also mention that it will be desirable for the gentlemen engaged in this cause to be prepared to shew us, in the event of its not being finished by twelve o'clock to-morrow night, what course is then to be taken. We mention it to all concerned, the gentlemen engaged on the defence as well as the officers of the Crown, that the point may be taken into consideration by them, and they may be prepared. It may appear that

the prisoners have rights in that case, as well as the Crown. We mention it thus early, for our functions terminate at twelve o'clock to-morrow night."

The next day Jean Baptiste La Pointe was examined. The material differences between Faille and La Pointe's evidence on the first and second trials are noticed in Mr. Justice Perrault's examination, p. 373 *et seq.* of De Reinhard's trial; with perhaps the following exceptions. In Faille's evidence in March he stated as a reason why they did not like to take charge of Keveny, "*Je demandois un fusil, ou des armes, parceque j'avois entendu qu'il avoit tué divers hommes, mais monsieur Macdonell les refusa.*" "I asked for a gun or arms, because I had heard he had killed several men, but Mr. Macdonell refused them;" which he omitted to state on his second examination, as was likewise the case with respect to "*une redingotte plaid*" "a Scotch plaid cloak," with which, on the first trial, he stated the Indian, Joseph, was covered, when Mr. M'Lehan's canoe arrived at the island where he and La Pointe were. La Pointe in recounting the manner in which Mainville spoke of the death of Keveny, makes, in the first instance, Mainville say, "*De Reinhard vouloit faire embarquer monsieur Keveny brutalement. Que Keveny a dit, 'je suis malade monsieur Reinhard, pourquoi me traitez vous de même.' Monsieur De Reinhard alors lui enfonce son épée dans le dos. Que lui, Mainville, lui tira une balle dans le col avec son fusil, et De Reinhard, coupa son épaule, avec le sabre, et le tua.*" "De Reinhard endeavoured to make Keveny get into the canoe in a violent manner. That Keveny said, 'I am ill, Mr. Reinhard, why do you use me so?' Mr. De Reinhard then run his sword into his back. That he, Mainville, discharged a ball from his



“gun into his neck, and De Reinhard cut his  
“shoulder with his sword and killed him;” which  
does not agree with his testimony in that respect  
on the second trial. Finally, in the notes of Mr.  
Simpson, the reporter, (vidé his examination, p.  
390,) La Pointe is stated to have said on the first  
trial that De Reinhard “*parloit François comme*  
“*un Meuron,*” “spoke French like a De Meuron  
“soldier,” i. e. not good French, although it ap-  
pears from Mr. Justice Perrault’s evidence, that  
that expression was not taken down by the Court.

Captain D’Orsonnens was then sworn, but his  
examination had not continued a long while, before  
the proceedings were put an end to; the only  
material circumstance that appeared beyond what  
occurs in the present reports, was the production  
to captain D’Orsonnens, and acknowledgement  
by him, of the order, or summons, of which the  
following is a copy:—

“Du Portage du Lac la Pluie,  
le 6 Octobre, 1816.

“Monsieur,

“La sureté personnel des sujets de  
“sa Majesté, exige, crainte de surprise ou acci-  
“dent que vous me remettiez toutes les armes,  
“ammunitions, poudre, plomb, &c. &c. &c. que  
“vous possédez au Fort; et qui appartiennent à  
“la Comp. Nord-Ouest—les armes particulières  
“seules seront respectées pour votre propre  
“sureté.

“J’ai l’honneur d’être

“Votre très humble et

“Obéiss. serviteur,

“Capt. P. D’ORSONNENS.

“Commdt. l’avant garde des

“Voyageurs de la Comp.

“d’Hudson, &c. &c. &c.

" P. S. Les picquets seront rasés par mes gens,  
 " les vôtres peuvent les aider si vous le trouvez  
 " expedient.

TRANSLATION.

" From the Portage of Lake la Pluie,  
 the 6 Octr. 1816.

Sir,

" The personal safety of His Majesty's  
 " subjects, requires, for fear of surprise or acci-  
 " dent, that you should deliver to me all the arms,  
 " ammunition, powder, shot, &c. &c. &c. which  
 " you have in your possession at the fort, and  
 " which belongs to the North West Company.—  
 " The arms that are private property will alone  
 " be respected, for your own safety.

" I have the honour to be,

" Your very humble and

Obedt. servant,

Capt. P. D'ORSONNENS.

" Commg. the advance guard of  
 " the Voyageurs of the Hudson's  
 " Company, &c. &c. &c.

" P. S. The pickets will be cut down by my  
 " people, yours may assist them, if you deem it  
 " expedient."

The mode in which the March trial was inter-  
 rupted and the proceedings quashed, being a no-  
 vel circumstance in criminal cases, at least in Ca-  
 nada; it may be advisable to state the termination  
 of those proceedings verbatim from the reporter's  
 notes.

" The Attorney-General, addressing the Court,  
 said:—' As it will be impossible to close the trial  
 by twelve o'clock, I propose, and the proposition  
 is assented to on the part of the prisoners, that a  
 juror be withdrawn.

“*Chief Justice Sewell.*—There must be a motion made, so that the subject may be brought regularly before us, and our decision be made of record. It may be made a precedent.

“*Attorney-General.*—I shall move that the last juror sworn be withdrawn. I believe that to be the usual course.

“The Attorney-General, having written his motion, tendered it, viz: That Pierre Roi, a juror, sworn in the case of *Dominus Rex, versus M'Lellan and De Reinhard*, be withdrawn from the box.

“*Chief Justice Sewell.*—State some cause for the motion, either from the number of witnesses yet to examine, or any other which you think proper, so that it may appear on a future occasion for the justification of the Court.

“The Attorney-General then amended his motion, and read it, viz: That Pierre Roi, a juror, may be withdrawn, because it is impossible to receive the verdict by twelve o'clock.

“*Chief Justice Sewell.*—It being impossible to close the case on the part of the Crown would be better, and it certainly will be impossible. The charge alone, upon the evidence only already received, would occupy three hours.

“*Attorney General.*—I will then make the motion as follows: That it being impossible to close the evidence on the part of the Crown before twelve o'clock, and the functions of the Court then terminating, it is moved by the Attorney-General, that Pierre Roi, the juror last sworn, be withdrawn, and consented to on the part of the prisoners.

“*Chief Justice Sewell.*—Archibald M'Lellan and Charles De Reinhard. On the part of the King it is proposed that, as the Crown officers can not close their evidence before twelve o'clock at night, at

which period the authority of this Court terminates, Pierre Roi, the juror last sworn, be withdrawn from the box. The effect of this motion will be that the cause will revert exactly to the same situation in which it would have been, if the trial had never commenced. Do you consent or not?"

Both prisoners consented, and the Chief Justice then, addressing the jury, returned them the thanks of the Court, and discharged them.

Mr. M'Lellan was afterwards admitted to bail, and in May another Court of Oyer and Terminer was held at Quebec, when a fresh indictment was preferred and found against Charles De Reinhard, François Mainville, Archibald M'Lellan, Cuthbert Grant, Joseph Cadotte, and Jean Baptiste Desmarais, (*vide* Appendix C.) The other parties not being on the spot, for Grant and Cadotte had been set at liberty upon the Grand Jury in March returning no bill against them, it was only against De Reinhard and M'Lellan that proceedings took place, which are those detailed in this volume.

In preparing these trials for the press much difficulty occurred from the indifferent French in which great part of the proceedings were minuted. This must be attributed, partly to the provincial jargon which the lower class of Canadians make use of, partly to the bad French spoken by the De Meuron soldiers, partly to the circumstance of several of the English gentlemen who had to express themselves in French in the course of the trials not being perfect masters of the idiom of that language, and partly to the many anglicisms both with regard to words and to construction which have crept into use in Canadian French particularly in the Courts and law proceedings. When in addition hereto it was considered that the stenographer, notwithstanding the acknowledged

fidelity of his minutes, being not much versed in the French idiom, could only put into the mouth of each interlocutor the sense of the words as they came to his ear, it was judged advisable to retain the grammatical imperfections and faulty expressions which appeared in the minutes that the printed report might convey as nearly as possible both the sense and the words of the proceedings. But the English translations at the bottom of the page, of whatever was said in French, and which, it may be confidently maintained, are perfectly faithful, will constitute the authority to be referred to, and render the whole a complete document; whilst the French in the text will serve as matter of curiosity and of correlative reference.

It is necessary to call the particular attention of the reader to the table of errata; and, should these reports be consulted for legal reference, it is recommended to correct those errata with the pen.

There remains only, in order that the European English reader may comprehend the provincial and technical terms occurring, to close this introduction with



## A GLOSSARY

*Of some words in use in North-West America, either peculiar to the Fur-Traders and Canadians, or such as are used in a different sense from their proper French construction.*

**Agrés.**—The whole furniture and tackle of a canoe.

**Allège, un canot allège.**—A light canoe, one fitted out to convey passengers only, and not goods.

**Anglois.**—An Englishman, the English, but applied exclusively to the servants of the Hudson's Bay Company, whether English, French, or Half-breeds, in contradistinction to the fur-traders from Canada, who are called *François*, of whatever country or language they may be.

**Arpent** (as a measure of length).—180 French feet.

**Aviron.**—A paddle.

**Barre, barre de canot.**—Bar of a canoe, a term applied both to the thwarts which stretch across a birch-bark canoe, and to the spaces between those thwarts.

**Birch bark.**—The material of which the canoes are made: *birch bark map*, (*vide p. 87.*) the Indians frequently use the birch bark to delineate their rude maps upon; sometimes also dressed buffalo hides, on which they paint sketches of their war and hunting excursions.

**Bois brûlés.**—See *Half-breeds*.

**Bourgeois.**—Master, employer; applied both, specially to the person (whether partner or clerk) who has the command and superintendence of a trading-post, or of a canoe, and, generally, to persons ranking as gentlemen, or above the class of servants.

**Bout.**—See *Canot*.

**Brigade.**—A fleet of canoes, bound to or from a particular trading-post or department.

**Butin.**—Things, goods, clothes, articles, every kind of personal property.

**Cache.**—A hiding place, likewise the thing hidden; a hidden hoard; a place (generally under ground) where provisions and other articles are hidden in the woods, or on the banks of rivers, to remain till the next season, or the return of the party to take them up: *en cache*, so hidden.

**Cacher.**—To secrete or hide in such places.

**Cage.**—A raft.

**Cajoux.**—A small raft.

**Canot.**—A canoe: the crew of a canoe go under the different denominations of *bouts*, *milieux*, *devant*, and *gouvernail*: *bouts*, ends, are those who paddle at the stern and at the stern, he that is at the stern is called the *devant*, or foreman, and takes the command, unless a *guide* be on board; he that is at the stern steers the canoe, whence he is called the *gouvernail*, or steersman; and all those between the stern and stern are *milieux*, or middlemen: the wages of the *bouts* are higher than those of the *milieux*, or middlemen.

**Capot.**—A great coat; *capot de couverture*, blanket great coat, one made out of a blanket.

**Carabine.**—A rifle.

**Chaudière.**—A kettle; used also to denote a sufficiency of provisions to supply one meal to the party; *faire la chaudière*, to cook victuals.

**Conseil.**—A council; generally applied to the formal meetings between parties of Indians, or between the traders and Indians.

**Dalle.**—A spout, narrow but deep channel.

**Department.**—Portion of country, the trade of which is placed under the special management of one or more partners or bourgeois.

**Devant.**—See *Canot*.

**Engagé.**—An engaged servant; applied specially to the Canadians who engage as *voyageurs* or *voyagers* for a term of years in the service of the fur-traders.

**Equipment.**—Equipment; the clothes and other articles furnished yearly to the clerks and servants of the fur-traders, every individual in their employment receiving an equipment proportioned to his station.

**Esperer.**—Besides its proper sense, to hope, to expect, this word is constantly used to signify, to wait, to stop; *esperer un peu*, wait a bit.

**Folle aronne.**—Wild rice, Indian rice, a species of rice that grows in abundance along the rivers and lakes in the North West; literally translated, wild oats, but the grain has no resemblance to oats, and is in fact rice.

**Fort.**—The trading posts are always called forts, though in general no otherwise fortified than by being placed in a square inclosure formed of palisades or pickets; indeed every house in the Indian country is called a *fort*.

**Franc, adj.**—Superior, applied to things the best of their kind; *du poisson franc*, fish very good to eat; *du bois franc*, hard wood, the fittest wood for durability, the best for firing, &c. *il parle franc*, he is a good speaker, he speaks distinctly.

**Franc, subst.**—A livre.

**François.**—A Frenchman, the French, but applied exclusively to the Canadian fur-traders, of whatever nation, to distinguish them from the traders who come from Hudson's Bay, and who are called, *Anglois*, English.

**Freemen.**—Canadians and others (not Indians or Half-breeds) who reside in the Indian countries, as hunters, fishermen, or farmers, and are not engaged servants of the fur-traders.

**Gabare.**—Frame or model on which a canoe is built.

**Galet.**—A smooth level rock; never used in the original French sense of pebble.

**Gouvernail.**—The steersman of a canoe; one who steers a canoe with a paddle, there being no rudder or helm; see *Canot*.

**Gratter.**—To scamper.

**Grémens.**—Tackle, apparel, apparatus (a bastard French word used by captain D'Orsonnens, p. 154).

**Guide.**—A guide, one who has the conduct of a brigade of canoes as a pilot, or conductor.

**Gum, gumming a canoe.**—For the purpose of paying the seams of the canoes, where the birch-bark of which they are made is sewed together, the gum or resin that exudes from various species of pine is made use of.

**Half-breeds, Métifs, Bois-brûlés.**—The names given to the mixed population which exists in the North West, arising from the connection

of Europeans or Canadians with the Indian women. These appellations are all synonymous. The first is the English one; *Métis*, is a corruption of the Spanish *Mestice*; and the term of *Bois-brûlé* is said to be derived from the sallow complexion of the half-breeds being compared to the appearance of a forest of fir-trees that had been burnt, an occurrence frequent in those parts, and which assumes an universal brown and dingy colour.

*Hangard*.—An outhouse of any description, whether a shed, a pent-house, or a closed store, in which goods are deposited.

*Hivernement*.—The wintering at a trading-post.

*Hommes libres*.—Freemen; see *Freemen*.

*Livre*.—A livre North West currency, is double the currency of Canada. One livre, N. W. being equal to two livres or francs in Montreal.

*Mangeur de Lard*.—Those *engagés* who only go to Lake Superior, and return to Montreal in the fall; also those engaged to winter who are novices, and winterers for the first time; literally pork eaters, on account of that meat being the principal food of the Canadians, until they get into the interior, where there is none, and they must do without it.

*Marche, march, a day's march*.—The distance a canoe goes in a day, (see p. 99 of M'Lellan's trial.)

*Marron*.—A deserter, a runaway.

*Milieu*.—See *Canot*.

*Métifs*.—See *Half-breeds*.

*Nager*.—To paddle.

*Nique*.—A nest; applied to the bar of a canoe, the bar next to the steersman.

*North Canoe*.—A canoe calculated for the shallow rivers, and difficult navigation of the interior; it is about half the size of a *Montreal canoe*, or one used in the navigation between Montreal and Fort William.

*Pemican*.—The meat of buffaloes, or moose deer, dried and pounded; mixed with grease or fat, it is generally put into bags made out of the hide, and called *Taureaux*: it is the universal article of food amongst the *engagés*, half-breeds and Indians in the North West, when travelling in the open season.

*Perche, perche de canot*.—The perch, or setting pole, of a canoe.

*Pièce*.—A package made up for the North West, weighing about 90 lbs. for the convenience of carrying across the portages.

*Portage*.—A carrying place.

*Prairie*.—A level tract of country without wood.

*Raquettes*.—Snow shoes.

*Saguenash*. (p. 77).—A term used by the Indians to signify an Englishman.

*Sucre sauvage, sucre gris, sucre du pays*.—Maple sugar, sugar made from the juice of the *acer saccharinum*.

*Taureau*.—A bag of Pemican, or pounded meat, made of raw buffalo hide, weighing usually about 90 lbs.

*Traverse*.—The distance from one head-land to another at the mouths of the rivers and bays in the lakes, across which the canoes stretch instead of keeping along shore, if the weather permits.

*Voyageur, .Voyager*.—Canadians and others engaged by the fur-traders as canoe-men. The term applies also to the traders themselves.

*Walappe*.—The prepared filaments of the roots of the white spruce tree used for sewing together the birch-bark in making canoes.



## Errata.

### *In De Reinhard's Trial.*

Page 35, line 18, for Hubert Faye, read Hubert Faille, and correct the same throughout in both trials, wherever the name occurs.

36. 2d line from bottom, for Fraser, read Ferries.

38. 15th line of note, for Fraser, read Ferries.

43. lines 12 and 15, for et après qu'il nous a eu laissés, read et après, qu'il nous avoit laissés.

68. lines 18 and 19, fill in the blanks. Vol. III. Cap. 9. page 738.

107. 10th line, for Chief Justice Bowen, read Mr. Justice Bowen.

147. 2d line from bottom of note, after any intention, insert nor any order from any one whomsoever.

154. 2d line from bottom, for ni aucune, read ni aucuns grémens pour.

155. 5th line from bottom of note, fill in the blank, materials for so doing.

172. line 17, for to whole, read the whole.

258. line 23, for la conduite du magistrat elle, ne doit pas, read la conduite du magistrat, elle ne doit pas.

289. line 17, for Mr. M'Donell, read Mr. M'Donald.

Ibid. line 18, for Mr. Allan M'Donald, read Mr. Allan Macdonell.

319. line 2, for dessous, read dessus.

327. line 20, for has taken, read has mistaken.

332. line 12, for enlarge, read elargi.

354. line 6, for Fletcher, read Fletcher.

436. line 9, for cause, read clause.

447. 15th line from bottom, in note, for homicide, read manslaughter.

490. line 6, for in point of law, read in point of fact.

492. line 3, for motives, read motions.

496. line 8, for perpetrate, read perpetrate.

516. 11th line from bottom, in note, for materially, read maturely.

539. line 2 of note, for homicide, read manslaughter.

638. line 16, for therey, read there.

### *In the Appendix.*

Page 26, line 10, for stet, read le.

### *In M'Lellan's Trial.*

Page 33, line 5 of note (12,) for half-breed, read half-breeds.

41. 15th line from bottom, of notes, after fifteen of us, insert There were usually three or four bourgeois, sometimes only one.

51. line 10, for Matin, read Martin, and correct the same throughout wherever the name occurs.



Page 59. to note (32) add,

C. J. S.—In the same bar with the prisoner M'Lellan?

L. P.—Yes, in the same bar, and he paddled there.

67. line 1, for De Lorge, read Des Loges, and correct the same throughout, wherever the name occurs.

82. 3d line fm. bottom, in note, for it was to be wished that Mr. Archy should take, read we must wait because Mr. Archy wanted to take. (*Vide explanation of esperer in the glossary.*)

87. 7th line fm. bottom, in note, for him read it.

110. 4th line fm. bottom, read à la première barre.

129. 10th line fm. bottom, for witness, read witnesses.

135. 4th line fm. bottom, for conselling, read counselling.

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## NOTE.

THE Act of 43d Geo. III. Cap. 138, commonly called the Canada Jurisdiction Act, being so frequently referred to in the course of the preceding trials, it is here printed entire, for more complete reference.

*Anno Quadragesimo tertio Georgii III. Regis.*

### CAP. CXXXVIII.

*An Act for extending the Jurisdiction of the Courts of Justice, in the provinces of Lower Canada, and Upper Canada, to the trial and punishment of persons guilty of crimes and offences, within certain parts of North America, adjoining to the said provinces.*

(11th August, 1803.)

WHEREAS crimes and offences have been committed in the Indian territories and other parts of America, not within the limits of the provinces of Upper or Lower Canada, or either of them, or of the jurisdiction of any of the Courts established in those provinces, or within the limits of any civil government of the United States of America, and are therefore not cognizable by any jurisdiction whatever, and by reason thereof great crimes and offences have gone, and may hereafter go unpunished, and greatly increase—For remedy whereof, *May it please your Majesty*, that it may be enacted, and be it enacted by the *King's most excel-*

*lent Majesty*, by and with the consent and advice of the Lords spiritual and temporal and Commons, in this present parliament assembled, and by the authority of the same, THAT from and after the passing of this act, all offences committed within any of the Indian territories, or parts of America, not within the limits of either of the said provinces of Upper or Lower Canada, or of any civil government of the United States of America, shall be, and be deemed to be offences of the same nature, and shall be tried in the same manner and subject to the same punishment as if the same had been committed within the provinces of Lower or Upper Canada.

2d. *And be it further enacted*, that it shall be lawful for the Governor or Lieutenant Governor, or person administering the government, for the time being, of the province of Lower Canada, by commission, under his hand and seal, to authorize and empower any person or persons wheresoever resident, or being at the time, to act as civil magistrates and justices of the peace, for any of the Indian territories, or parts of America, not within the limits of either of the said provinces, or of any civil government of the United States of America, as well as within the limits of either of the said provinces, either upon informations taken or given within the said provinces of Lower or Upper Canada, or out of the said provinces, in any part of the Indian territories, or parts of America aforesaid, for the purpose only of hearing crimes and offences, and committing any person or persons guilty of any crime or offence, to safe custody, in order to his or their being conveyed to the said province of Lower Canada, to be dealt with according to law, and it shall be lawful for any person or persons whatsoever, to apprehend and take before any person so commissioned as aforesaid, or to

apprehend and convey, or cause to be safely conveyed, with all convenient speed, to the province of Lower Canada, any person or persons guilty of any crime or offence, there to be delivered into safe custody, for the purpose of being dealt with according to law.

3d. *And be it further enacted*, that every such offender may and shall be prosecuted and tried in the Courts of the province of Lower Canada, (or if the Governor, or Lieutenant Governor, or person administering the government for the time being, shall from any of the circumstances of the crime or offence, or the local situation of any of the witnesses for the prosecution or defence, think that justice may be more conveniently administered, in relation to such crime or offence in the province of Upper Canada, and shall by any instrument, under the great seal of the province of Lower Canada, declare the same, then, that every such offender may, and shall be prosecuted and tried in the Court of the province of Upper Canada,) in which crimes or offences of the like nature are usually tried, and where the same would have been tried, if such crime or offence had been committed within the limits of the province, where the same shall be tried under this act; and every offender tried and convicted under this act, shall be liable and subject to such punishment as may, by any law in force in the province where he or she shall be tried, be inflicted for such crime or offence; and such crime or offence may and shall be laid and charged to have been committed within the jurisdiction of such Court, and such Court may and shall proceed therein to trial, judgement, and execution, or other punishment, for such crime or offence, in the same manner, in every respect, as if such crime or offence had really been committed within the jurisdiction of such Court, and it shall also be law-



ful for the judges and other officers of the said Courts to issue subpoenas, and other processes, for enforcing the attendance of witnesses on any such trial, and such subpoenas and other processes shall be as valid and effectual, and be in full force, and put in execution in any parts of the Indian territories, or other parts of America, out-of, and not within the limits of the civil government of the United States of America, as well as within the limits of either of the said provinces of Upper or Lower Canada, in relation to the trial of any crimes or offences by this act made cognizable in such Court, or to the more speedy and effectually bringing any offender or offenders to justice under this act as fully and amply as any subpoenas or other processes are within the limits of the jurisdiction of this Court, from which any such subpoenas or processes shall have issued as aforesaid; any act or acts, law or laws, custom, usage, matter or thing to the contrary notwithstanding.

4th. *Provided always, and be it further enacted,* that if any crime or offence charged and prosecuted under this act shall be proved to have been committed by any person or persons not being a subject or subjects of His Majesty and also within the limits of any colony, settlement or territory, belonging to any European states, the Court before which such prosecution shall be had, shall forthwith acquit such person or persons, not being such subject or subjects as aforesaid, of such charge.

5th. *Provided nevertheless,* that it shall and may be lawful for such Court to proceed in the trial of any other person being a subject or subjects of His Majesty, who shall be charged with the same or any other offence, notwithstanding such offence shall appear to have been committed within the limits of any colony, settlement or territory, belonging to any European state as aforesaid.

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DISTRICT OF  
QUEBEC. }

*Special Session of OYER and TERMINER,  
and GENERAL GAOL DELIVERY.*

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*Monday, 18th May, 1818.*

PRESENT,

HIS HONOR CHIEF JUSTICE SEWELL,  
The Honorable MR. JUSTICE PERRAULT,  
The Honorable MR. JUSTICE BOWEN.

THE Special Commission (Appendix A.) being read by the Clerk of the Crown, and the Grand Jury sworn in, and charged by the honorable the Chief Justice, (Appendix B.) the Court adjourned until Tuesday, two o'clock, P. M.

*Tuesday, 19th May, 1818.*

PRESENT,

HIS HONOR CHIEF JUSTICE SEWELL,  
The Honorable MR. JUSTICE BOWEN.

Nil, except swearing some of the Grand Jury.  
Adjourned until nine o'clock, A. M. to-morrow.

Wednesday, 20th May, 1818.

PRESENT AS YESTERDAY.

DOMINUS REX,

versus,

CHARLES DE REINHARD;  
ARCHIBALD MACLELLAN,  
CUTHBERT GRANT,  
JOSEPH CADOTTE,  
JEAN BAPTISTE DESMARAIS.

ON an indictment  
for the murder of O-  
WEN KEVENY, on the  
11th day of Septem-  
ber, 1816.

*The Grand Jury returned the indictment, A TRUE  
BILL.*

(Signed) THOMAS WILSON, Foreman.

*Attorney-General.*—I move that Charles De Reinhard be put to the bar, and call Archibald M'Lellan.

Mr. Stuart answered that Archibald M'Lellan was not here at present, though in Quebec, but he should be in court at any time the Attorney-General required him.

Charles De Reinhard was put to the bar.

*Clerk of the Crown.*—Charles De Reinhard hold up your right hand.

*The Prisoner was then arraigned upon the indictment. (Appendix C.)*

*Clerk of the Crown.*—How say you, Charles De Reinhard, are you *guilty* of the felony and murder whereof you stand indicted, or *not guilty*?

*Prisoner.*—Not guilty.

*Clerk of the Crown.*—How will you be tried?

*Prisoner.*—By God and my country.

*Clerk of the Crown.*—God send you a good deliverance. When will you be ready for your trial?

*Prisoner.*—On Friday next.

*Chief Justice Sewell.*—Let the court be adjourned till Friday morning at eight o'clock. And gentlemen, who are summoned to attend as petty jurors, I wish to remark to you, that the crime of which the prisoner is accused is a most serious one,

and his trial is of equal importance to himself and the justice of the country. I desire, therefore, strongly to impress upon your minds the absolute necessity of every juror attending on Friday morning, punctually at eight o'clock, that the prisoner may have the full benefit of the right of challenge; given to him by the laws of his country; and, gentlemen, the court, to ensure this right in its fullest extent, will feel itself obliged in justice to the prisoner to impose a fine upon every defaulter.

Adjourned until Friday next, eight o'clock, A. M.

*Friday, 22d May, 1818.*

PRESENT,

HIS HONOR CHIEF JUSTICE SEWELL,

The Honorable MR. JUSTICE BOWEN.

COUNSEL FOR THE CROWN,

Mr. Attorney-General, UNIACKE,

Mr. Solicitor-General, MARSHALL.

COUNSEL FOR THE PRISONER,

ANDREW STUART,

GEORGE VANFELSON,

J. R. VALLIERE DE ST. REAL,

} Esquires.

*Charles De Reinhard was put to the bar and informed, by the Clerk of the Crown, of his right of challenging and the time of making his challenges; when after several being made, on the part of the Crown and of the prisoner, the following gentlemen were sworn as a jury.*

THOMAS LEVALLE,

STEPHEN CURTIS,

LAURENT AUDY,

JOSEPH MIVILLE,

OLIVIER TRAHAN,

ROGER SASSEVILLE.

RALPH BREWER,

JEAN LA FORME,

SIMON LE COMPTE,

JOSEPH PREVOST,

DANIEL THOMPSON,

JEAN DESNOYERS.

*Attorney-General—*

*Gentlemen of the Jury,*

You have been sworn to try the prisoner at the bar, named Charles De Reinhard, who is accused of making on the 11th day of September, 1816, in the fifty-sixth year of the reign of His Majesty, an assault upon one Owen Keveny, with a sabre, and giving him two wounds therewith, which caused his death. There are, gentlemen, several counts in the indictment, but they all arrive at the same conclusion, that these assaults caused his death. The first count charges the assault to have been made with a sword or sabre—the second charges the same offence, but with a gun loaded with ball—the third charges the same effect, namely, his death, to have been produced by the prisoner, with a gun and a sabre. The fourth charges another person with the murder and makes the prisoner a principal in the second degree, in being present and assisting one François Mainville, who it is alleged made the assault with a gun; the prisoner being present and assisting to procure his death by giving him two wounds with a sabre.—The evidence to be produced will prove that the deceased met his death, principally by the act of the prisoner, in wounding him with the sabre. Gentlemen, this is one of the cases that have been brought from the Indian territory, and will, I am confident, receive from you that patient investigation which its importance entitles it to. There can be no doubt, from the evidences we shall produce, of the death of Keveny, and as little, that he came by his death from the hands of De Reinhard. There are several persons charged with the crime, but availing themselves of the right given them by the laws of their country, they have chosen to have separate trials. The deceased, Owen Keveny, was a

native of Ireland, in the service of the Earl of Selkirk, for his colony established at the Red River; and the prisoner at the bar was formerly a serjeant in the regiment De Meuron, who at the breaking up of his regiment, entered into the service of the North-West Company. It has been intimated to me, gentlemen, that the deceased was not in the service of the Earl of Selkirk, but in that of the company of the Hudson's Bay, a circumstance of no particular importance. Having arrived in the Indian country, it will appear, that in consequence of complaints made against him by some of the persons who were under him, a warrant was issued by a Mr. Archibald Norman M'Leod, and given to the prisoner at the bar to execute; at the time of its execution there was a great deal of disputing; the deceased being a man of a very high spirit, did not for some time submit to the warrant, and I believe opposed its execution with some violence; eventually, however, he submitted. Whether, gentlemen, this circumstance did not beget or give rise, in the mind of the prisoner, to that degree of malice as eventually caused the death of this man, Owen Keveny, it will be for you, to determine.— Being arrested, it will appear to you in evidence, that he was sent by Mr. M'Lellan to pass to Fort William, out of Lac la Pluie—that he was put for this purpose into a canoe, guided by five *Bois Brûlés*—that in the course of their passage, a short time after setting out, they met two other canoes, in one of which was a Mr. M'Donell, a partner of the North-West Company, who put him in charge of two men (who will be called before you,) of the names of *Faille* and *La Pointe*, together with a Savage or Indian named *Joseph*, and known in that territory as *Fils de Perdrix Blanche*. It will appear to you, gentlemen, that in the course of the passage, some difficulty occurred between the de-

ceased and the Indian, Joseph, and that eventually Keveny was left by these persons on an uninhabited Island, as the Indian would not allow him to proceed farther with them. I ought to have mentioned, that Mr. M'Donell had directed them to return with Keveny to Lac la Pluie, as there was no probability of a canoe going from Fort William to Montreal. Mr. M'Donell had met them in the river Winnipic, which is between the two lakes on their way to Fort William; but they were now under his orders returning to Lac la Pluie.—At the time they left Keveny, they went in quest of provisions, of which they were short, and it will be shewn in evidence, that during their search they quarreled among themselves, and that finally the Indian quitted them.—Faille and La Pointe, being thus left by the Indian, who had acted as their guide, and not being acquainted with the route, made for an island to wait the passing of a canoe, by which they hoped to be taken up. It will appear in evidence, that the canoe of Mr. M'Lellan, was seen by them approaching the place where they were.—In this canoe, gentlemen, were, the prisoner at the bar, Mr. Cadotte, Mr. Grant, Mr. Archibald M'Lellan, and a number of *Bois Brûlés*. The Indian, Joseph, also was in the canoe, (having been fallen in with a short time after he had quitted Faille and La Pointe,) concealed under a Scotch cloak, and was not perceived by these men during the commencement of a conversation which took place, relative to their separation from him.—As the conversation and occurrences that took place at this moment, will be submitted to you in evidence, it is unnecessary that I should detain you to repeat them.—Faille and La Pointe were taken into the canoe, and the whole went in search of Mr. Keveny, whom they found, not at the spot where he had been left by these persons, but at

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some distance higher up among the Indians, at a place known as *en haut des Dalles*. It is here, gentlemen, that the evidence begins to affect the prisoner in the strongest manner. After staying some time in this place, De Reinhard took Keveny in charge, and was left with Mainville, a *Bois Brulé*, and Joseph, the Indian, to follow M'Lellan and the others who went away in his (M'Lellan's) canoe. After they had proceeded six or seven miles, it will appear in evidence, that the deceased had occasion to be put on shore, and going a short distance from them for his necessary occasions, it was by Mainville, and the prisoner at the bar, determined that that was a suitable place to carry into effect a design that, it will be shewn, had long previously existed, viz: that of taking away the life of Owen Keveny.—The deceased had returned and was in the act of embarking in the canoe, when the prisoner at the bar gave him a thrust in the back with a sabre, and subsequently another, and that Keveny, notwithstanding he was wounded, made such resistance, that it was not improbable that he would have succeeded in wresting the sabre from the prisoner: De Reinhard counselled the *métis* Mainville to fire at Keveny, which he did and instantly killed him, Keveny falling directly into the canoe.—M'Lellan, and those who accompanied him, after journeying three or four leagues, encamped for the night—and some time after they had done so, the little canoe was seen approaching, and in it the prisoner at the bar, Mainville and Joseph, but not Mr. Keveny. Enquiry was made for him by some of the people, and it was answered that he would not return again, that he was well hid. The words were, "*il ne reviendra plus, il est bien caché.*"—From the chain of corroborative evidence that we shall place before you—and you will remember from the nature of the crime, it is scarcely ever



possible to exhibit positive testimony—I fear, gentlemen, you will not be able to doubt of the guilt of the prisoner at the bar. The witnesses we shall bring before you, are generally of the lower order of men, but we believe very honest and fully entitled to credit; of that, however, gentlemen, it is your peculiar province to judge. They will prove to you such a variety of strong circumstances, that although we can not, for reasons sufficiently obvious, introduce that positive evidence of the murder, which it is always desirable should precede a conviction, and which upon accusation of all other crimes, the officers of the Crown are enabled to do, yet you will not be able to resist their united weight against the prisoner. The clothes of the deceased, full of blood, and pierced by a ball and a sword, were in the canoe when it arrived at the encampment. De Reinhard had the keys of Mr. Keveny's boxes with which he opened them in the presence of the witnesses; his sabre was in a bloody state, and he boasted of having killed Keveny. Another very strong circumstance is, gentlemen, the division which was made by the prisoner, of the *butin* and property of the deceased—he then actually assigned as a reason for taking the best of the articles, that he ought to have them because it was him who had killed Keveny;—“*comme c'est moi qui l'ai tué j'aurai le choix.*” And he also gave as a reason for Mainville having rather more than the others, that he had been present and gave him assistance, saying, “*que comme Mainville étoit avec moi et m'aida à le tuer, qu'il aura plus que les autres;*” and the division was made in that way.

We shall prove also, that there was a great quantity of blood in the bow of the canoe, which the prisoner and Mainville, admitted at the time, was the blood of Keveny; but perhaps, gentle-

men, you will consider the clothes of Keveny, being in the little canoe at the time it arrived, as one of the strongest circumstances of the case—that they were there, and in the condition I have described, will be most distinctly proved to you, by two men named Faille and La Pointe, who will also prove the opening of the trunks by the prisoner, and indeed the whole of the incidents I have mentioned to you.

Another very strong proof we shall produce, will be, the prisoner's own confession, made to an officer of the same regiment, to which the prisoner had formerly belonged, a captain D'Orsonnens, whom he met some time after, and to whom he voluntarily confessed that he had killed Keveny—and on various other occasions he also freely confessed it;—indeed I believe he never denied it. We shall also produce a confession, in the prisoner's own hand writing, made before a magistrate, in which the whole of the circumstances are detailed as I have related them. Upon this chain of evidence I apprehend you will have little difficulty in returning a verdict for the Crown. The people to be produced before you, are the traders of the Indian country, canoe men and *engagés* of a lower order of men certainly, but I believe every way entitled to credit; that, however, gentlemen, as I mentioned just now, is peculiarly your province to determine. The case is one of those which has arisen from the unfortunate disputes between the Hudson's Bay and the North-West Companies, relative to which, we have heard so much, but to which I am sure, gentlemen, you will pay no attention, otherwise I would beg of you to allow nothing to have the slightest influence on your judgements, but what is produced before you in evidence. We do not know what is the defence the prisoner will set up—if he can

convince your consciences that he did not commit the crime he is accused of, you will acquit him—if, on the other hand, the Crown establishes the case I have detailed to you, it will be your duty by the oaths you have taken, though a very painful one, yet your duty will be to say he is guilty. He has put himself on God and his country for his trial, and you, as that country, are to decide upon his guilt or his innocence.

*The Attorney-General having addressed the jury to the same effect in the French language, called Mr. Sax; the other witnesses being ordered to withdraw with the exception of Messrs. Coltman, Gale and Bouchette.*

**WILLIAM SAX, Sworn.**

I am a surveyor—je connois d'après un plan que j'ai ici et des autres, les limites du Haut Canada, c'est-à-dire de l'ancienne province de Québec; la limite de l'ouest; l'embouchure de la rivière Ohio est en longitude  $88^{\circ} 50'$  ouest de *Greenwich*, et latitude  $37^{\circ} 10'$  nord.<sup>(1)</sup>—That appears by a map which I have made and have in my hand, to be the latitude and longitude of the junction of the Ohio river with the Mississippi.

*Chief Justice Sewell.*—When you speak of the junction of the Ohio with the Mississippi river, do you mean where the Ohio river empties itself into the banks of the Mississippi?

*Mr. Sax.*—That is the understanding, and the statute provides also—

*Chief Justice Sewell.*—We do not require any in-

<sup>(1)</sup> I am acquainted, according to a map which I have here, with the limits of Upper Canada, that is to say, of the old province of Quebec: the western limit; the mouth of the river Ohio is in longitude  $88^{\circ} 50'$  west from *Greenwich*, and latitude  $37^{\circ} 10'$  north.

formation or assistance in the construction of the statute; we require it as to the fact. The construction of the statute, it is *our* province to decide on.

*Attorney-General.*—Would a line running north, from the junction of the Ohio and Mississippi rivers strike, in its passage to the Hudson's Bay territory, the great lakes; and where would it strike lake Superior? And where would it leave Fort William?

*Mr. Sax.*—Such a line drawn due north, would strike lake Superior on its passage, and at or about a degree east of Fort William, or perhaps three quarters of a degree.

*Attorney-General.*—That is to say, the west end of lake Superior?

*Mr. Sax.*—Yes, nearly so—when I say that such a line would strike east of Fort William, I mean that it would leave Fort William, about three quarters of a degree to the west of it. It is so laid down in all the maps.

*Attorney-General.*—From your knowledge of maps, will you then explain in French to the jury, this line.

*Mr. Sax having done so, continued his evidence.*—Je connois la rivière Winnipic par les plans et c'est entre le 50° et 51° latitude nord. Le Portage des Rats est 49½° par ce plan ou 49° 45' et longitude 94° 6' ouest de Greenwich, et la rivière Winnipic est conséquemment à environ 5° ouest de la ligne courant nord de la jonction des rivières Ohio et Mississippi, et certainement hors de l'ancienne province de Québec.<sup>(2)</sup>

(2) I am acquainted with the river Winnipic by the maps, and it is between the 50th and 51st degree of north latitude. The Portage des Rats is in 49½° by this map, or 49° 45', and longitude 94° 6' west from Greenwich, and the river Winnipic is consequently about 5° west of the line running north from the

*Chief Justice Sewell.*—What are you speaking of now?

*Mr. Sax.*—That a line, supposing it to run due north from the junction of the Ohio and Mississippi rivers, would leave the river Winnipic five degrees out of the province of Upper Canada, not a northward line, but a due north line.

*Attorney-General.*—Do you mean to say that a northward line is not a north line?

*Mr. Sax.*—It is not always, it may be north by east, or north by west or north-north-west, or many other points of the compass. A due north line is one that goes direct to the north pole without any deviation whatever.

*Attorney-General.*—And does not a northward line go to the north pole? If you had a northward line to run, would not you run it to the north pole?

*Mr. Sax.*—Perhaps I might and perhaps not, I would certainly run it northerly, though I might not run it due north.

*Attorney-General.*—What is to prevent you taking it due north? If you had a line to run from a given point till it struck a river, and thence to continue along the course of that river northward, would you not call that drawing a northern line?

*Mr. Sax.*—Undoubtedly it would be a northern line, but not a due north line.

*Attorney-General.*—Would it not? Could it be east or west?

*Mr. Sax.*—It might according to circumstances be a north eastward or north westwardly line, and yet a northern line, that is a line having a northward course or drawing nearer to the north pole as it progressed, though not an astronomical north line.

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junction of the rivers Ohio and Mississippi, and certainly, without the old province of Quebec.

*Attorney-General.*—Is not a north line a line northward?

*Mr. Sax.*—Certainly, (one of the jury requested Mr. Sax to speak French.) Une ligne courant vrai nord, est sans doute une ligne northward.<sup>(3)</sup>

*Attorney-General.*—And a line true north-westward you would call a north westward line?

*Mr. Sax.*—Assurément une ligne vrai nord-ouest est une ligne *north-westward*, mais une ligne par exemple qui courroit au nord, nonobstant qu'elle gagneroit dans son cours plus de nord que d'ouest ou d'est, ne seroit pas nécessairement une ligne vrai nord, mais une ligne de nord ou *northward*.<sup>(4)</sup>

*Chief Justice Sewell.*—I really do not comprehend the distinction; to say that a northward line is not a north line, I confess appears to me to approach the "*reductio ad absurdum*." Suppose that we had a compass here, and from a given point I draw a line north-westward, that is to say, terminating at a point north-westward, would not that be a due northwest line.

*Mr. Sax.*—It would if drawn due north-west, but if in drawing it you gained northerly, it would from the course of its deviation, be a line northward, though not a north line.

*Chief Justice Sewell.*—Then its course northward must unquestionable be due north—if a line north-westwardly is a north-west line.

*Mr. Vallière de St. Réal.*—Your honor will observe that he added, "but if it deviated so as to

<sup>(3)</sup> A line running due north is undoubtedly a northward line.

<sup>(4)</sup> Certainly; a line due northwest is a north-westward line, but a line, for instance, that runs towards the north notwithstanding it may gain in its course more northing, than westing or easting, is not therefore necessarily a due north line, but is a northern or northward line.

“ gain a little north, it would then be a north-ward line.

*Chief Justice Sewell.*—If a line is to be drawn from a given point of the compass, say from the west in a northward direction, to say that such a line would not be a due north line, appears to me to be a contradiction to the plainest principle of common sense, and totally irreconcilable. I will put the question to you again Sir. Do I understand you to say, that a line drawn from a given point northward is not a north line?

*Mr. Sax.*—Surveyors usually call lines running—

*Chief Justice Sewell.*—I am not asking you what surveyors usually call—I want to know whether in point of fact, a fact that any man can tell as well as a surveyor, whether a line from a western or eastern point of the compass, drawn northward, is or is not, a north line? just answer that question, yes or no—and then you may explain that answer in any way you think proper.

*Mr. Sax.*—It certainly must be, to a certain extent, a north line, but not a due north line.

*Chief Justice Sewell.*—Why not?

*Mr. Sax.*—A line drawn from any point, between two cardinal points of the compass, direct to any cardinal point, is a due north or west line, as the case may be; but a line may be so drawn between two points, as to be called by surveyors, a northward or a southward line, as it may chance to gain in the course of running it upon that point of the compass to which it is approaching; as I might draw a line from a point north-westardly, but gaining in a northerly direction in its course, so that at its termination it would be a line northward, from having more northing there than at the point from which I started.

*Chief Justice Sewell.*—Would not a line drawn

from a westerly point, one half north and one half east, be a due north-east line, or must not lines drawn from any point in one half the compass between east and west be a north, and in the other half, a south line?

*Mr. Sax.*—Certainly, while progressing north or south, but they might be gaining east or west.

*Chief Justice Sewell.*—Is it then equally true, that lines running east from points between north and south, are due east lines?

*Mr. Sax.*—Yes, if progressing east.

*Attorney-General.*—Then they cannot be northward any more than north.

*Mr. Sax.*—An identical line, from any point running a direct course east, is undoubtedly an eastern line, but if inclining in its course half north and half east it is a north-east line.

*Chief Justice Sewell.*—Am I to understand you that one and the same line can be a northern and eastern line?

*Mr. Sax.*—The same line may be a north-east line.

*Chief Justice Sewell.*—Let me be clearly understood by you, because at present I do not at all comprehend what you mean. Taking as a point of departure a centre, and travelling on the radius of a circle, would not the line, according to what you say, be at one and the same time a due north-east and a due north west line---which appears to me completely a, "*reductio ad absurdum*," though you certainly have said so.

*Attorney-General.*---If your honor will permit me, I will ask him a question?---If you were directed simply to draw a boundary line northward, would you qualify it in any way, by drawing it to the east or west, or would you go as nearly in a direct north course as possible?

*Which question being repeated in French.*



*Mr. Sax.*—Si on m'ordonnoit de tirer une ligne *northward* sans aucune autre direction, je la tirerois aussi vrai nord comme je pourrois. Il dépendroit aussi si on m'ordonnoit de la tirer astronomiquement ou magnétiquement, parceque les variations en quelques places entre une ligne astronomique et une ligne magnétique sont vingt ou trente degrés, et en quelques places elles s'accordent. La ligne astronomique est la vraie parallèle.<sup>(\*)</sup>

*Attorney-General.*—But whether you run the line astronomically or magnetically, still in running an unqualified northward line, you would get as much to the north as you could?

*Mr. Sax.*—Oui, si j'avois à tirer une ligne *northward* sans autre direction, je la tirerois vrai nord, ou astronomiquement, ou magnétiquement. Magnétiquement, s'il y avoit de variation, et astronomiquement, s'il n'y avoit pas de variation.<sup>(\*)</sup>

*Attorney-General.*—Will the Court have the goodness to take that down. How, Sir, would a line drawn due west from the Portage des Rats, strike the river Mississippi?

*Mr. Sax.*—A line drawn due west from the Portage des Rats, would never strike it at all.

*Chief Justice Sewell.*—What line are you speaking of now, the American line?

*Attorney-General.*—Yes, your honor. Well but if a line was drawn from Portage des Rats, any

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(\*) If I were directed to draw a northward line without any other instruction, I should draw it as due north as I could. It would also depend upon whether I was desired to draw it astronomically or magnetically, for the variations between an astronomical and a magnetic line extend in some places from twenty to thirty degrees, and in some places they agree. The astronomical line is the true parallel.

(\*) Yes, if I had to draw a line northward, without other instruction, I should draw it due north, either astronomically or magnetically; magnetically if there was any variation, and astronomically if there was none.

way to the Mississippi, would it in its passage strike the lake or river Winnipic, or how would it leave them?

*Mr. Sax.*—Une ligne tirée du Portage des Rats jusqu'à la rivière Mississippi laisseroit toute la rivière Winnipic au nord-ouest de cette ligne.<sup>(7)</sup>

*Chief Justice Sewell.*—But Portage des Rats is not the point of departure; it is "the most north-western point of the Lake of the Woods" which we want.

*Attorney-General.*—The most north-western corner of the Lake of the Woods, is Portage des Rats. Do not the English and American maps agree in that particular?

*Mr. Sax.*—Yes, they both make that the most north-western point of the Lake of the Woods, and a line drawn from there to the Mississippi, would leave both the lake and river Winnipic entirely to the north-west of it.

*Attorney-General.*—And if a line were drawn due west, as the Americans contend it ought to be, would the effect be the same?

*Mr. Sax.*—Oui, une ligne tirée vrai ouest laisseroit la rivière Winnipic en son entier, au nord-ouest.<sup>(8)</sup>

*Mellish's map of the United States, produced by the Attorney-General.*

*Attorney-General.*—Connoissez-vous la carte géographique que monsieur Mellish a publié sous la protection du gouvernement des États-Unis? Regardez-la, s'il vous plaît, et dites à la Cour et à messieurs les jurés, comment elle laisse le Portage des Rats ou la rivière Winnipic?

(7) A line drawn from Portage des Rats to the river Mississippi, would leave the whole of the river Winnipic to the north-west of such a line.

(8) Yes, a line drawn due west would leave the whole of the river Winnipic to the north-west.

*Mr. Sax.*—Cette carte la laisse en son entier au nord-ouest excepté peut-être un coude précis où la rivière court dedans le Lac des Bois. (\*)

*Attorney-General.*—It must be so entirely, for if not, you do not draw your line correctly after the statute, it must be from the dead water of the lake you start, or you take your departure from a river.

*Mr. Sax.*—It may be and actually is the proper point of departure, at the very point where the two join. Et cela est d'après les meilleures cartes ou mappes tant Angloises qu'Américaines. (\*\*)

*Attorney-General.*—Will your honor please to take that down?

*Cross examined by Mr. Valliere de St. Real.*

*Mr. Sax.*—J'ai vu plusieurs cartes et mappes, et c'est d'icelles que j'ai ma connoissance des latitudes et longitudes des quelles je parlois. Les cartes de Jeffreys et Bouchette s'accordent, je crois, et dans ces cartes la ligne ouest de l'ancienne province de Québec court depuis la jonction des rivières Ohio et Mississippi, suivant le Mississippi jusqu'à sa source qu'on appelle *Turtle Lake*, dans latitude 47° 38' nord, et longitude 94° 30', ou plus vraiment 95° ouest. (\*\*)

(\*) *A. G.*—Are you acquainted with the map, which Mr. Mellish has published under the auspices of the government of the United-States. Look at it, if you please, and tell the Court, and the gentlemen of the jury, how it lays down the Portage des Rats, or the river Winnipic.

*Mr. S.*—This map leaves it wholly to the north-west, excepting, perhaps, a particular elbow, where the river runs into the Lake of the Woods.

(\*\*) And that is in conformity with the best charts or maps, both English and American.

(\*\*) I have seen many charts and maps, and it is from them I derive my knowledge of the latitudes and longitudes of which I spoke. The maps of Jeffreys and Bouchette, I believe, agree.

*Mr. Vallière de St. Réal.*—Of Greenwich?

*Mr. Sax.*—Oui, ouest de Greenwich.<sup>(12)</sup>

*Mr. Justice Bowen.*—What did you say was the latitude?

*Mr. Sax.*— $47^{\circ} 38'$  north.

*Chief Justice Sewell.*—Do I understand you right Sir, when I take you say that the head of the Mississippi in Turtle Lake has about  $47^{\circ} 38'$  northern latitude and about  $95^{\circ}$  western longitude, calculating it from the meridian of Greenwich?

*Mr. Sax.*—Yes, that is about the latitude and longitude.

*Mr. Justice Bowen.*—From whence does the line go?

*Mr. Vallière de St. Réal.*—Northward, or due north is it?

*Attorney-General.*—I beg my learned friend will permit the Court to put their own questions as they think proper.

*Chief Justice Sewell.*—You are certainly right, the Court can have no desire but that which is common to all parties, that of obtaining truly and correctly the facts of the case, and if, Mr. Vallière, the Court does not obtain thereby the information you think important to obtain, you can extract it yourself. Our question does not deprive you of your right of cross examination. How does the line run?

*Mr. Sax.*—De la source de la riviere Mississippi elle court par une ligne vrai nord jusqu'à la Baie d'Hudson. Elle est ainsi tirée sur la carte de Bouchette; la carte de Jeffreys l'arrête au Lac

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and in these maps the western limit of the old province of Quebec runs from the junction of the Ohio and the Mississippi, following the Mississippi until its source, which is called Turtle Lake, in latitude  $47^{\circ} 38'$  north, and longitude  $94^{\circ}$ , or more correctly,  $95^{\circ}$  west.

(12) Yes, west from Greenwich.

Turtle; et par conséquent laissera la source du Lac des Bois à l'est d'une telle ligne, et les Dalles encore sont à l'est.<sup>(12)</sup>

*Mr. Vallière de St. Réal.*—You only know that from maps, I believe, you was never there, I imagine?

*Mr. Sax.*—I was never there, it is only from maps that I speak.

*Mr. Vallière de St. Réal.*—I have done with Mr. Sax.

*Attorney General.*—Respecting these maps—what nation does Jeffreys belong to?

*Mr. Sax.*—Jeffreys is an English author or geographer.

*Mr. Vallière de St. Réal.*—I wish that to be taken down.

*Attorney General.*—Where was his map published?

*Mr. Sax.*—I do not know, it does not mention on the map.

**MR. JOSEPH BOUCHETTE, JUNIOR, Sworn.**

*Attorney General.*—You Sir, are, I believe, deputy-surveyor-general of this province, and can give us the western line of Upper Canada?

*Mr. Bouchette.*—Je suis député arpenteur général de la province : la ligne ouest du Haut Canada est une courant vrai nord depuis la jonction des rivières Ohio et Mississippi jusqu'aux limites sud de la Baie de Fundy.

*Attorney General.*—Non pas de Fundy je crois.

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(12) From the source of the river Mississippi it runs by a line due north to Hudson's Bay. It is thus drawn in Bouchette's map: it stops in Jeffreys's map at Turtle Lake: and consequently it will leave the source (beginning) of the Lake of the Woods to the east of such a line, and the Dalles is also to the east.

*Mr. Bouchette.*—Non, de la Baie d'Hudson, et la latitude de cette jonction des rivières est  $37^{\circ} 10'$  nord et la longitude est  $88^{\circ} 58'$  ouest du méridien de Greenwich, et cette ligne laissera toute la rivière Winnipic à l'ouest. Le Portage des Rats est à  $49^{\circ} 51'$  latitude au nord et  $94^{\circ} 10'$  de longitude ouest de Greenwich.<sup>(14)</sup>

*Attorney-General.*—Do you know the Dalles?

*Mr. Bouchette.*—I have discovered it laid down in Arrowsmith's chart, as being about twelve miles above, that is farther north than, Portage des Rats. L'endroit appelé les Dalles est à douze milles au nord du Portage des Rats, selon Arrowsmith. Le point le plus au nord-ouest du Lac des Bois a  $49^{\circ} 28'$  de latitude nord et de longitude  $94^{\circ} 25'$  ouest de Greenwich.<sup>(15)</sup>

*Attorney General.*—How would a line drawn from there to the Mississippi, leave the Winnipic as relates to the United States of America?

*Mr. Bouchette.*—It would leave the whole of the river Winnipic to the north, and consequently out of the limits of the United States of America, it would leave the head of the Mississippi to the south.

<sup>(14)</sup> *Mr. B.*—I am deputy-surveyor-general of the province. The western limit of Upper Canada is a line running due north, from the junction of the rivers Ohio and Mississippi to the southern limits of the Bay of Fundy.

*A. G.*—Not Fundy, I believe.

*Mr. B.*—No: Hudson's Bay, and the latitude of the junction of those rivers is  $37^{\circ} 10'$  north, and the longitude is  $88^{\circ} 58'$  west from the meridian of Greenwich; and this line will leave the whole of the river Winnipic to the west. The Portage des Rats is in latitude  $49^{\circ} 51'$  north, and longitude  $94^{\circ} 10'$  west from Greenwich.

<sup>(15)</sup> The place called the Dalles is twelve miles to the north of Portage des Rats, according to Arrowsmith. The most north-western point of the Lake of the Woods, is in latitude  $49^{\circ} 28'$  north, and longitude  $94^{\circ} 25'$  west from Greenwich.

*Attorney-General.*—Yes, but I want the Winnipic only, and also tell us what would be the effect of a line drawn due west, from the most north-western point of the Lake of the Woods.

*Mr. Bouchette.*—Une ligne courant du point le plus au nord-ouest du Lac des Bois, jusqu'à aucune partie de la rivière Mississippi, laissera toute la rivière Winnipic au nord, et la même chose arrivera si une ligne étoit tirée vrai ouest, et par conséquent, la rivière est hors des limites des Etats Unis de l'Amérique.<sup>(16)</sup>

*Attorney-General.*—Now Sir, you say you know the Dalles.

*Mr. Bouchette.*—Suivant la carte de Mons. Arrowsmith ils sont à quatre lieues au nord du Portage des Rats et conséquemment hors des Etats Unis.<sup>(17)</sup>

*Chief Justice Sewell.*—The Dalles, are they on the Winnipic?

*Mr. Bouchette.*—Oui, au nord du Lac des Bois et aussi du Portage des Rats.<sup>(18)</sup>

### *Cross examination by Mr. Stuart.*

What age are you Sir?

*Mr. Bouchette.*—I am nineteen years old.

*Mr. Stuart.*—I observe you have a map before you, what map is it?

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(16) A line running from the most north-western point of the Lake of the Woods to any part of the river Mississippi, will leave the whole of the river Winnipic to the north, and the same thing will happen if a line be drawn due west; and consequently that river is without the boundaries of the United States of America.

(17) According to Mr. Arrowsmith's map, they are four leagues to the north of Portage des Rats, and consequently not within the United States.

(18) Yes: to the north of the Lake of the Woods, and also of Portage des Rats.

*Mr. Bouchette.*—It is the map lately published by my father, the surveyor-general.

*Mr. Stuart.*—I believe you never were at any of these places beyond Upper Canada, or at the mouth of the Ohio, or ever out of Lower Canada, never I believe in the United States? Will you reply in French?

*Mr. Bouchette.*—Je n'ai jamais été à l'embouchure de la rivière Ohio ni au Lac des Bois, ni à la rivière Winnipic; je suis sorti du Bas Canada et j'ai été dans les Etats Unis, mais non pas à cette partie. Ma seule connoissance des latitudes et longitudes est tirée d'après la carte de mon pere devant moi à présent, et celle de Mons. Arrowsmith, publiée en 1795.

*Mr. Stuart.*—Vous avez parlé d'une ligne comme étant la limite du Haut Canada, est-elle sur la carte de votre père?

*Mr. Bouchette.*—La ligne verte sur le plan devant moi en manuscrit, prolongée de  $88^{\circ} 58'$  ouest longitude et courant vrai nord, a été copiée d'un plan par Emanuel Bowen, en 1775, à Londres. Elle court vrai nord de la confluence des rivières. Sur d'autres plans la ligne ouest du Haut Canada, est marquée de courir depuis l'embouchure de la rivière Ohio, dans le Mississippi jusqu'à sa source, dans le Lac Turtle.<sup>(1)</sup>

<sup>(1)</sup> *Mr. B.*—I never was at the mouth of the river Ohio; nor at the Lake of the Woods, nor at the river Winnipic. I have been out of Lower Canada, and in the United States, but not in that part. My sole knowledge of the latitudes and longitudes is derived from my father's map, now before me, and Mr. Arrowsmith's, published in 1795.

*Mr. S.*—You have spoken of a line as being the boundary of Upper Canada. Does it appear upon your father's map?

*Mr. B.*—The green line upon the manuscript map before me, prolonged from longitude  $88^{\circ} 58'$  west, and running due north, was copied from a map by Emanuel Bowen, in 1775, at London. It runs due north from the confluence of the rivers.



*Mr. Stuart.*—Here is a purple line, what does that shew?

*Mr. Bouchette.*—That is principally for a heading to the map, it is, however, copied from some map, but I do not recollect of what geography.

*Mr. Stuart.*—I observe another line, but I hardly know what colour to call it, (though blue I believe,) as marking some boundary.

*Mr. Bouchette.*—It is a line denoting the boundary fixed by the treaty of Utrecht, and is taken also from Emanuel Bowen, and there is also a line on the map taken from Bennett's, being the boundary of the Hudson's Bay territory.

*Mr. Stuart.*—I imagine Sir, you know nothing of the correctness of any line under the treaty of Utrecht?

*Mr. Bouchette.*—No, I have read the treaty, that is all.

*Mr. Stuart.*—The same I presume, with respect to the Hudson's Bay territory?

*Mr. Bouchette.*—Yes, certainly, I never was there.

*Attorney-General.*—I really do not see what we have to do with the Hudson's Bay territory, or Mr. Bouchette's knowledge of it.

*Mr. Stuart.*—It may probably appear very immaterial to my learned friend, the Attorney-General, but it is very material to us.

*The map was here handed to the Court.*

*Mr. Justice Bowen.*—From what geographer is the south boundary of the Hudson's Bay taken?

*Mr. Bouchette.*—From Emanuel Bowen.

*Chief Justice Sewell.*—I thought, and you certainly did say just now, that that line was copied from Bennett.

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In other maps the western limit of Upper Canada, is drawn as running from the mouth of the river Ohio in the Mississippi until its source in Turtle Lake.

*Mr. Bouchette.*—No Sir, the line from Bennett, is the line running from St. Croix river to the highlands, and thence along them.

*Chief Justice Sewell.*—Here is a line on 49° latitude.

*Mr. Bouchette.*—That is from Emanuel Bowen also, et tirée par les commissaires sous le traité d'Utrecht, et la ligne marquée en violette est la ligne sud du territoire de la Baie d'Hudson, d'après le plan d'Emanuel Bowen.<sup>(20)</sup>

WM. BACHELOR COLTMAN, Esq. *Sworn.*

*Attorney-General.*—Are you Sir, a Magistrate for the Indian territories, as well as for this district.

*Mr. Coltman.*—I am a magistrate for this district and a commissioner in the Indian territory.

*Mr. Justice Bowen.*—Let the examination be in French, if you please.

*Attorney General.*—Avez vous été dans le territoire Sauvage, et quand?

*Mr. Coltman.*—J'ai été dans les territoires Sauvages, j'y étois l'année passée.<sup>(21)</sup>

*Attorney-General.*—What do you consider the most north-west point of the Lake of the Woods?

*Mr. Coltman.*—Mon esprit étant bien occupé par l'affaire de ma charge, je n'ai pas fait des observations particulières sur le local, mais j'ai toujours regardé, et je considère moi-même, le Portage des Rats, comme étant l'endroit le plus au-

<sup>(20)</sup> And drawn by the commissioners, under the treaty of Utrecht, and the line coloured violet, is the southern limit of the territory of Hudson's Bay, according to Emanuel Bowen's map.

<sup>(21)</sup> A. G.—Have you been in the Indian territory, and when?

Mr. C.—I have been in the Indian territories, I was there last year.

nord-ouest du Lac des Bois, et cela d'après ce que j'ai remarqué. Mais je n'ai pas eu occasion de faire des remarques exactes sur les lieux.

*Attorney-General.*—Sans doute vous avez connaissance de la rivière Winnipic. Sort-elle du Lac des Bois, et où descend elle ?

*Mr. Coltman.*—Il est vrai que la rivière Winnipic sort du Lac des Bois et descend dans le Lac Winnipic.

*Attorney-General.*—Combien de distance y-a-t-il entre les deux ?

*Mr. Coltman.*—Je ne puis pas le dire au juste.

*Attorney-General.*—Non pas au juste, mais combien de lieues pensez vous ? Vingt ou trente ?

*Mr. Coltman.*—Je pense environ une centaine de lieues ; no, not quite so much ; probably eighty ; probablement de quatre-vingt à cent lieues.<sup>(22)</sup>

*Attorney-General.*—What is the general course of the river Winnipic ?

*Mr. Coltman.*—Le cours général de la rivière Winnipic est au nord-ouest ou environ ce cours, mais il est nécessaire que je dise encore, que j'ai été si bien pressé d'autres affaires, que je n'ai pas

(22) *Mr. C.*—My mind being much occupied by the business of my mission, I did not make any particular local observations, but I always understood, and I myself consider, the Portage des Rats to be the most north-western part of the Lake of the Woods, and that also according to what I observed, but I had no opportunity of making exact observations on the spot.

*A. G.* You have, no doubt, a knowledge of the river Winnipic. Does it run out of the Lake of the Woods, or into it.

*Mr. C.*—It is true that the river Winnipic runs out of the Lake of the Woods, and into Lake Winnipic.

*A. G.*—What is the distance between them ?

*Mr. C.*—I can not say exactly.

*A. G.*—Not exactly : but how many leagues do you think ; twenty or thirty ?

*Mr. C.*—I think about one hundred leagues ; probably from eighty to a hundred leagues.

eu le tems de faire des remarques très particulières.<sup>(23)</sup>

*Attorney-General.*—Is any part south, of a line drawn due west from the north-west angle of the Lake of the Woods.

*Mr. Coltman.*—Je pense assurément que non. Je ne crois pas qu'aucune partie de la rivière Winnipic se trouvera au sud d'une ligne courant ouest, du point le plus nord-ouest du Lac des Bois, ou au moins, une très petite partie.<sup>(24)</sup>

*Attorney-General.*—It is hardly necessary to ask you, if a line drawn from that point to the Mississippi, would leave any part of the Winnipic to the south?

*Mr. Coltman.*—Sans doute que non. C'est plus au sud; et une ligne courant du Lac des Bois à la rivière Mississippi laissera toute la rivière Winnipic au nord-ouest d'une telle ligne.<sup>(25)</sup>

*Chief Justice Sewell.*—Such a line must necessarily run almost due south.

*Attorney-General.*—Do you know a place called the Dalles?

*Mr. Coltman.*—J'ai connoissance d'un endroit appelé les Dalles, je l'ai passé deux fois.<sup>(26)</sup>

*Chief Justice Sewell.*—Are the Dalles upon the river Winnipic?

(<sup>23</sup>) The general course of the river Winnipic is north-west, or about that course; but it is necessary I should repeat, that I had no time to make particular observations.

(<sup>24</sup>) I think assuredly not. I do not believe that any part of the river Winnipic, would be to the south of a line running west from the most north-western point of the Lake of the Woods, or at most, a very small portion.

(<sup>25</sup>) Without doubt it would not. It is more to the south, and a line running from the Lake of the Woods to the river Mississippi, will leave the whole of the river Winnipic to the north-west of such a line.

(<sup>26</sup>) I do know a place called the Dalles: I passed it twice.

*Mr. Colman.*—The spot called the Dalles, is a part of that river.

*Attorney-General.*—At what distance are the Dalles from the Portage des Rats?

*Mr. Colman.*—Je ne puis pas le dire avec certitude étant toujours accoutumé de lire dans le canot dans les pays sauvages, mais les endroits ne sont pas près-à-près, ils sont, comme je penserois, à la distance de deux ou trois heures de marche.<sup>(27)</sup>

*Attorney-General.*—At what rate Sir, do you generally travel in the canoes.

*Mr. Colman.*—We go just according to the currents we meet with. Our progress is entirely regulated by them; but perhaps generally a league and a half, or two leagues per hour.

*Chief Justice Sewell.*—Then it is perhaps about fourteen miles.

*Mr. Colman.*—I should think it more; I should imagine it to be about five or six leagues from Portage des Rats.

*Mr. Justice Bowen.*—To the north Sir, of Portage des Rats and Lac des Bois.

*Mr. Colman.*—C'est par une ligne courant au nord avec un peu d'ouest, et elles sont distantes de cinq ou six lieues, je crois, du Portage des Rats et du Lac des Bois.<sup>(28)</sup>

*Attorney-General.*—Are you Sir, acquainted with the place where Owen Keveny was killed, or said to be killed?

*Mr. Stuart.*—I object to that question being put, for if answered it could not be made evidence.

(27) I can not say with accuracy, being always accustomed to read whilst travelling in a canoe in the Indian countries; but the places are not very near to each other; they are I should think at the distance of two or three hour's march.

(28) It is by a line running to the north with a little westing, and they are distant from five to six leagues, I believe, from Portage des Rats and the Lake of the Woods.

The place must have a name, and must be identified before any question can be put relative to any thing whatever, that may be supposed to have occurred there.

*Chief Justice Sewell.*—It can be a matter of no consequence to put the question; we know enough of this case to know, that if the murder was committed at all, it was committed at the Dalles, or very near to them; but you must first establish the fact.

*Attorney-General.*—For the present I have done with Mr. Coltman; reserving to myself the right hereafter, should it be necessary, to examine Mr. Coltman again.

*Chief Justice Sewell.*—Certainly, Mr. Attorney-General.

*Cross examined by Mr. Stuart.*

You speak, I think you have said, Mr. Coltman, about the boundaries, and other places you have mentioned in your examination in chief, only from belief?

*Mr. Coltman.*—I speak about the lines and other places, only from belief.

*Chief Justice Sewell.*—But from having been there also.

*Mr. Stuart.*—Yes, your honour, but Mr. Coltman adds to his having been there *from belief only*.—Will you give your former answer to the jury, in French Sir?

*Mr. Coltman.*—Je parle seulement d'après ma croyance, étant généralement occupé à lire quand j'ai voyagé dans ces endroits-là, et je n'avois pas eu d'occasion de faire des remarques particulières sur le local de la rivière Winnipic.<sup>(25)</sup>

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<sup>(25)</sup> I speak only according to my belief, being generally engaged in reading whilst travelling in those parts, and I had not

*Mr. Stuart.*—Am I to understand you as speaking in the same way, when you say that the Portage des Rats is the most north-western point of the Lake of the Woods?

*Mr. Collman.*—Oui, je parle d'après la même croyance, une croyance aussi fondée sur cette circonstance-ci : on m'a dit que c'est le point le plus au nord-ouest, et quand je l'ai passé, je n'ai rien vu pour m'en faire douter ; on m'a dit que c'étoit-là le point d'où la ligne couroit entre les Etats Unis de l'Amérique et les Anglois, suivant le traité de 1783.<sup>(20)</sup>

*Mr. Stuart.*—Can you say Sir, where it was you was told this, or at what time, whether before or after passing it?

*Mr. Collman.*—Je ne puis dire l'endroit, mais c'étoit durant le passage, ou dans le tems que j'étois dans le haut pays, qu'on m'a dit que c'étoit le point plus au nord-ouest du Lac des Bois.<sup>(21)</sup>

*Mr. Stuart.*—You made no astronomical observations, or any other, so as accurately to ascertain the latitudes and longitudes?

*Mr. Collman.*—None, whatever ; my only observations were those of the eye, in passing accidental remarks.

*Chief Justice Sewell.*—Then I will add, Sir,

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an opportunity of making particular observations on the localities of the river Wihnic.

(<sup>20</sup>) Yes : I speak according to the same belief, a belief likewise founded upon this circumstance. I was told that it was the most north-western point, and when I passed it, I saw nothing that could make me call this in doubt. I was informed that that was the point whence the boundary line ran between the United States of America and the English, agreeably to the treaty of 1783.

(<sup>21</sup>) I cannot say where, but it was on the passage, or during the time I was in the upper country, that I was informed it was the most north-western point of the Lake of the Woods.

“d’après mes observations, ou remarques en passant.”<sup>(32)</sup>

*Mr. Stuart.*—Your honour will remark, that my question was not only whether Mr. Coltman made any astronomical observations on the places, but also whether they came under his eye in such a manner as accurately to observe these two places, and Mr. Coltman’s answer is in the negative, they did not.

*Chief Justice Sewell.*—You spoke of Portage des Rats.

*Mr. Stuart.*—I spoke, or intended to speak, of both places, your honour, and Mr. Coltman’s answer referred to both. Is not Fort William, Sir, reputed generally to be in the Province of Upper Canada?

*Mr. Coltman.*—Oui, le Fort William est censé ordinairement être dans la Province du Haut Canada, et j’entends qu’il l’est.<sup>(33)</sup>

*Solicitor General.*—I submit to your honour, that there is nothing in this case to, which this can apply.

*Mr. Stuart.*—We are not called upon at present to shew its application; it is a fact and therefore evidence.

*Solicitor General.*—But I contend that my learned friend, Mr. Stuart, ought to shew how he intends to apply evidence, which *primâ facie* has no bearing on the case, before he is entitled to proceed in such a course of examination; I therefore thought it right to check it in the commencement.

*Chief Justice Sewell.*—All that Mr. Stuart has obtained, is the naked fact that Fort William is,

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<sup>(32)</sup> “According to my observations, or remarks made in passing.”

<sup>(33)</sup> Yes; Fort William is usually considered to be in the Province of Upper Canada; and I understand it to be so.





according to general repute, in Upper Canada. Whether any or what use he may propose to make of it, we cannot say; as a fact it is evidence.

*Mr. Stuart.*—Do not writs issue in the western district of Upper Canada on that presumption.

*Mr. Coltman.*—The chief justice of Upper Canada told me——

*Solicitor General.*—You must not tell us that Mr. Coltman.

*Mr. Stuart.*—I will ask you Sir, is it not a matter of public notoriety, that the processes of the magistrates of the western district, are issued for offences at Fort William and executed there?

*Mr. Coltman.*—Oui, il est notoire que les writs des magistrats du district ouest du Haut Canada, sont émanés pour être exécutés à Fort William.<sup>(24)</sup>

*Mr. Stuart.*—You have traversed a good deal Sir, in that country, did you observe any vestiges of French forts above Fort William in your way to Red River?

*Mr. Coltman.*—I do not recollect that I did; I do not think I did.

*Chief Justice Sewell.*—Is it worth while to take that?

*Mr. Stuart.*—No, it is not necessary, I have done with Mr. Coltman at present, we propose to examine him on the defence.

### SAMUEL GALE, Esq. Sworn.

*Attorney-General.*—You have been in the Indian territory I believe Sir?

*Mr. Gale.*—J'ai été dans le territoire Indien l'été dernier.

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(24) Yes: it is a matter of notoriety that writs are issued by the magistrates of the western district of Upper Canada, to be executed at Fort William.

*Attorney-General*.—Avez vous descendu la rivière Winnipic ?

*Mr. Gale*.—Oui, j'ai descendu la rivière Winnipic depuis le Lac des Bois, jusqu'au dedans du Lac Winnipic.<sup>(36)</sup>

*Attorney-General*.—Do you know the Portage des Rats ?

*Mr. Gale*.—Je connois le Portage des Rats.<sup>(36)</sup>

*Attorney-General*.—What course has the river Winnipic, from Portage des Rats to Lake Winnipic ?

*Mr. Gale*.—Son cours depuis le Portage des Rats jusqu'au Lac Winnipic est le même comme en avant, *nord de nord-ouest*.

*Chief Justice Sewell*.—Nord tirant a l'ouest un peu ?

*Mr. Gale*.—Oui, moins cependant à l'ouest qu'au nord.<sup>(37)</sup>

*Attorney-General*.—Then the whole is *north*, is it not ?

*Mr. Gale*.—Je ne voudrois pas parler positivement, mais je crois qu'une ligne tirée de la source de la rivière Winnipic dans le Lac Winnipic, seroit au *nord de nord ouest* ; mais comme avocat, je ne voudrois pas dire qu'une telle ligne est une ligne *nord*.<sup>(38)</sup>

<sup>(36)</sup> *Mr. G.*—I was in the Indian territory last summer.

*A. G.*—Did you go down the river Winnipic ?

*Mr. G.*—Yes: I went down the river Winnipic, from the Lake of the Woods to within Lake Winnipic.

<sup>(36)</sup> I do know Portage des Rats.

<sup>(37)</sup> *Mr. G.*—Its course from Portage des Rats to Lake Winnipic is the same as before, north of north-west.

*C. J. S.*—North tending a little to the west ?

*Mr. G.*—Yes: nevertheless, less to the west than to the north.

<sup>(38)</sup> I should not like to speak positively, but I believe that a line drawn from the source (beginning) of the river Winnipic in Lake Winnipic, would be to the north of north-west, but, as a lawyer, I would not say that such a line was a *north* line.



*Chief Justice Sewell.*—From what we have heard this morning, I think it would puzzle a dozen lawyers to describe a line.

*Attorney-General.*—Are you, Sir, acquainted with the Hudson's Bay territory, and its line of separation from the province of Upper Canada, by maps or any other way?

*Mr. Gale.*—I have never seen a map in which they were correctly delineated, according to my idea.

*Attorney-General.*—By the treaty of Utrecht, was not the boundary established?

*Mr. Gale.*—I know that by the treaty of Utrecht, no line was given nor any boundary fixed, as to the Hudson's Bay territory south, or on the side of Upper Canada. I have examined that treaty for the purpose of ascertaining. Je n'ai pas connoissance qu'une ligne ait été tirée entre les territoires d'Hudson's Bay et le Canada, en conséquence du traité d'Utrecht; et ce traité ne donnoit pas une ligne des limites.<sup>(39)</sup>

#### *Cross examination by Mr. Stuart.*

Do you mean Sir, to say positively, that no part of the river Winnipeg is in a more southern latitude than Portage des Rats?

*Mr. Gale.*—I perhaps do not know precisely where it commences. I considered that I entered it at Portage des Rats, and I do not think that any part is more south, but it may perhaps begin a mile or two before.

*Mr. Stuart.*—Will you undertake positively to say one way or the other?

(39) I do not know that any line has been drawn between the territories of Hudson's Bay and Canada, in pursuance of the treaty of Utrecht, and that treaty did not describe a boundary line.

*Mr. Gale.*—I should not like to be positive, but I will mention why I think I am correct, as to its course. *Intimated to speak French.*

J'avois une petite boussole devant moi, et j'ai remarqué que le cours général de la rivière Winnipeg est, comme je l'ai dit, pendant une petite distance, plus au nord qu'après. <sup>(\*)</sup>

*Chief Justice Sewell.*—For what distance, Sir, does its progress preserve the more northerly course?

*Mr. Gale.*—Perhaps about ten or twelve leagues from the Portage des Rats; the whole course of the river is certainly not due north, but if a line was drawn from its commencement at the one lake to its discharging itself into the other, the course of the river would certainly be more north than any other.

**HUBERT FAYE, Sworn. Examined by the Solicitor General.**

Je suis voyageur; en 1816, j'ai été au service de la compagnie du Nord-Ouest, vers la fin de l'été de cette année, je suis parti du Lac la Pluie, dans un canot, pour aller vers la Rivière Rouge.

*Solicitor General.*—La quatrième journée, avez-vous rencontré des canots? <sup>(\*)</sup>

*Mr. Vanfelson.*—I object to that question as totally improper; the Solicitor General can put, did he meet a canoe, and then, at what time?

<sup>(\*)</sup> I had a small compass before me, and I observed that the general course of the river Winnipeg is as I have said, for a short distance, the course is more north than afterwards.

<sup>(\*)</sup> *H. F.*—I am a voyager. In 1816, I was in the service of the North-West Company. Towards the end of that year I left Lake la Pluie, in a canoe to go towards Red River.

*S. G.*—On the fourth day did you meet any canoes.

*Solicitor General.*—I do not require to be told what I may put, or how it should be asked.

*Mr. Vanselson.*—The learned Solicitor General must be aware that he can not be permitted to put a leading question; it was his putting such a one that led me to interrupt him.

*Chief Justice Sewell.*—Do not let us waste our time in altercation. Quel jour avez vous rencontré quelque chose, et quoi? <sup>(42)</sup>

*Faye.*—Le quatrième, ou peut-être le cinquième jour, nous avons rencontré dans la Rivière Winnipeg deux canots—Il y avoit dans les canots cinq *Métifs* ou *Bois Brûlés*, des bourgeois, et un prisonnier nommé Keveny qui avoit des fers aux mains. Il y avoit dans le canot avec moi, monsieur Cadotte et monsieur M'Donnell, et ils me donnèrent le prisonnier en charge. Monsieur Cadotte commandoit notre canot. C'est un commis de la société du Nord-Ouest. Je ne sais pas s'il se nomme Joseph. Nous sommes débarqués à terre aussi bien que les gens des deux autres canots, et M'Donnell et Cadotte nous ont donné le prisonnier en charge pour l'emmener au Lac la Pluie. Le prisonnier étoit en charge de moi, et il y avoit dans le canot avec moi un nommé La Pointe et José ou *Fils de la Perdrix Blanche* qui est un sauvage, et nous avons pris la route pour retourner au Lac la Pluie, et monsieur M'Donnell et monsieur Cadotte ont resté à terre. Quelques jours (trois jours peut-être après,) mais dans peu de jours, nous avons encore rencontré deux canots appartenans à la société du Nord-Ouest; j'ai reconnu dedans Monsieur Stuart, Monsieur Thomson et Monsieur Fraser. Monsieur Stuart a demandé où est ce que nous allions? et je lui ai

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(42) On what day did you meet any thing, and what did you meet?

dit qu'on alloit au Lac la Pluie avec un prisonnier. Il dit qu'il aimeroit le voir et il l'a vu. Nous étions alors dans le Lac des Bois. Ils se sont parlé quelquefois. Après, monsieur Thomson nous a conseillé de retourner, parcequ'il n'y avoit point de canots alors qui devoient descendre à Montreal—nous avons, cependant, continué notre route vers le Lac la Pluie, et nous avons rencontré la même journée une brigade de canots appartenans a la société du Nord-Ouest, sous la conduite d'un nommé Joseph Paul. Je demandois Joseph (le sauvage) pour revenir avec Paul, mais il n'y consentit pas. Je suis revenu dedans le canot, et alors nous avons décidé de revirer avec lui, ayant manqué de provisions, et je ne savois pas le chemin, ni La Pointe, ni le sauvage plus que La Pointe, ni moi-même, c'est à dire le chemin ou la route pour le Lac la Pluie. Nous avons suivi la brigade de Joseph Paul pendant une journée, mais le lendemain il nous a dégradé et nous avons perdu de vue la brigade, parce qu'elle marchoit, et notre petit canot ne pouvoit les suivre; nous avons mis à terre, on nous a donné pour guide le sauvage, fils de la Perdrix Blanche. Le même soir que nous avons mis à terre, le sauvage m'a fait bien comprendre qu'il vouloit tuer le prisonnier Keveny. Il ne faisoit que jouer avec son fusil, en le mettant comme pour le tirer, et disant *pouff, pouff*; par ces gestes. j'ai bien compris qu'il vouloit tuer monsieur Keveny. Je ne sais pas s'il a coupé des bâtons; je ne me rappelle pas qu'il l'ait fait.<sup>(43)</sup>

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(43) On the fourth, or perhaps on the fifth day, we met two canoes in the river Winnipeg. There were in the canoes five *Metifs*, or *Bois Brûlés*, some gentlemen, and a prisoner of the name of Keveny, who was handcuffed. Mr. Cadotte, and Mr. M'Donell were in the canoe with me, and they gave the prison-

*Mr. Vanfelson.*—The course my learned friend, the Solicitor General, is pursuing, is one that is not only irregular, but one upon which at the late sessions, the Court has already decided; what can evidence of this nature have to do with the prisoner? Does the Solicitor General pretend that we are answerable for the conduct of this In-

er in charge to me. Mr. Cadotte had the command of our canoe. He is a clerk of the North-West Company. I do not know whether his name is Joseph. We landed, as well as the people out of the other two canoes, and M'Donell and Cadotte gave the prisoner in charge to us to convey him to Lake la Pluie. The prisoner was under my charge, and there were in the canoe with me one La Pointe, and Joseph, or *Fils de la Perdrix Blanche*, (son of the white Partridge,) who is an Indian, and we went away to return to Lake la Pluie, and Mr. M'Donell and Mr. Cadotte remained on shore. Some days after, (perhaps three days, but in a few days,) we again met two canoes belonging to the North-West Company. I recognized Mr. Stuart, Mr. Thomson, and Mr. Fraser, on board of them. Mr. Stuart asked where we were going, and I answered him we were going to Lake la Pluie with a prisoner. He said he should like to see him, and he saw him. We were then in the Lake of the Woods. They conversed together several times. Afterwards Mr. Thomson advised us to return, as there would then be no canoes going down to Montreal. We however continued our route, and on the same day we met a brigade of canoes belonging to the North-West Company, under the charge of one of the name of Joseph Paul. I requested Joseph, the Indian, to let us return with Paul, but he did not consent. I went back to the canoe, and then we determined to go back with him, being in want of provisions; and I did not know the way, neither La Pointe, nor the Indian, no more than La Pointe, or myself; that is to say, the way or route to go to Lake la Pluie. We followed Joseph Paul's brigade for a day, but on the following day he left us behind, and we lost sight of the brigade, because they sailed, and our little canoe could not follow them, so we put a shore. The Indian, *Fils de la Perdrix Blanche*, had been given us for a guide. On the same evening that we landed, the Indian gave me to understand that he wanted to kill the prisoner Keveny. He played with his gun, putting it to his shoulder and saying, *puff, puff*. It was by his gestures that I understood he wanted to kill Keveny. I do not know whether he cut any sticks; I do not recollect that he did.

dian, and if not, what effect can the evidence have? It is repeating an attempt to introduce that sort of evidence which, on a former occasion, the Court most decidedly rejected.

*Chief Justice Sewell.*—It certainly does not appear at present to affect that prisoner, and even was it admitted as evidence, I do not know whether it would not make for him rather than against him, but at present De Reinhard is no way connected with these men, and consequently cannot be affected by any thing done by them. We do not profess to judge of what evidence the Crown is in possession of: Hereafter, perhaps, there may be some circumstances which connect the prisoner with these people, but the connection ought to be shewn, before evidence is admitted of matters which occurred in which, as the prisoner was absent, he, *prima facie*, did not participate. The substratum must be to connect him with them, and then go into evidence as to their conduct: it is not only the regular way, but the shortest and surest method.

*Solicitor Général.*—In reply to my learned friend, Mr. Vanfelson, I would remark, that I mean to pretend nothing, but that I have a chain of testimony to introduce, which clearly connects the prisoner with these people. I shall shew by that evidence, that there had been a settled design to take away the life of this unfortunate man; and I was about proving, that persons were employed in the execution of this design, and I will hereafter, associate the prisoner with them.—I humbly submit to the Court, that the shortest method, whilst (with great deference undoubtedly,) it is a regular method, is first to prove the fact alleged to have been done, and subsequently shew, that although the prisoner was not at the moment actually present, yet, in the eye of the law, he was a participant.



*Chief Justice Sewell.*—Were the circumstances admitted to be evidence in the shape it now appears, I think it would be rather a service to the prisoner, than otherwise, as it might have a tendency to create a strong doubt, from this conduct of the Indian, whether others may not be suspected; this, however, is only a remark, from the impression of my own mind. On the point before us, we are clearly of opinion, that you must connect the prisoner with these people, or rather this Indian, before you can be admitted to adduce evidence of transactions, when he was not present.

*Examination resumed by the Solicitor General.*

*Faye.*—Nous avons couché à terre, et le lendemain matin quand j'étois pour réveiller le prisonnier, Keveny m'a dit qu'il étoit malade, et qu'il n'étoit pas capable de partir alors. Il voulût de l'eau chaude, et il m'a demandé à chercher de l'eau au bord de la grève, et j'y allois, mais je ne l'ai porté parceque j'ai vu alors que le Sauvage et La Pointe sont partis dans le canot; ils avoient poussé au large. Je leur ai crié de venir à terre, et ils sont venus. La Pointe a fait mettre à terre, et je me suis embarqué avec eux. Nous sommes partis pour le Bas de la Rivière laissant le prisonnier sur une isle. Cette isle est dans la rivière Winnipic en bas des Dalles, et la même isle où nous avions campé la nuit auparavant. Après m'être embarqué nous avons descendu la rivière avec le dessein de gagner le Lac Winnipic. Quelques jours après, nous avons remonté pour acheter des vivres des Sauvages. Je les ai acheté tant en haut qu'en bas des Dalles.—Le Sauvage s'est fâché avec La Pointe: ils se sont battus ensemble, le lendemain que nous avions quitté notre prisonnier, et le Sauvage s'est sauvé dans les bois et nous l'avons laissé. La Pointe et

moi sommes embarqués encore, et nous avons remonté la rivière avec l'intention de gagner le Lac la Pluie. Nous l'avons remonté une certaine distance, douze arpents peut-être, mais ayant perdu notre guide, et ne sachant le chemin, nous avons pris le parti de débarquer sur une petite isle, et d'attendre que quelques canots s'adonneroient à passer.

*Mr. Justice Bowen.*—Aviez vous encore entré le Lac des Bois?

*Faye.*—Non, monsieur, nous n'avions pas.

*Solicitor General.*—Connoissez vous la distance entre les deux isles, c'est-à-dire, l'une où vous avez laissé Keveny et cela où vous avez resté?

*Faye.*—Je ne puis pas dire—je ne me souviens pas la distance entre l'isle où nous avons laissé Keveny et celle où nous avons resté pour attendre les canots.<sup>(44)</sup>

<sup>(44)</sup> *H. F.*—We slept on shore, and the next morning, when I went to wake the prisoner, Keveny said he was ill, and that he could not go then. He wanted hot water, and he asked me to go and fetch him some water from the beach, and I went, but I did not bring him any, because I then saw that the Indian and La Pointe had put off in the canoe. They had pushed off into the stream. I called to them to come on shore and they came. La Pointe pushed to land, and I embarked with them. We set off for Bas de la Rivière, leaving the prisoner on an island. That island is in the river Winnipic, below the Dalles, and is the same island where we had encamped the night before. After I had embarked, we went down the river, intending to go to Lake Winnipic. A few days afterwards we turned back, in order to purchase provisions from the Indians; I bought some both above and below the Dalles. The Indian quarrelled with La Pointe: they fought together the day after we had left our prisoner, and the Indian ran away into the woods, where we left him. La Pointe and I embarked again, and ascended the river with an intention of getting to Lake la Pluie. We had ascended it a certain distance, perhaps twelve arpents, but having lost our guide, and not knowing the way, we came to a determination to land on a small island and wait there till some canoes should pass.

*Mr. J. B.*—Had you then entered the Lake of the Woods.

*H. F.*—No, Sir, we had not.

*Mr. Vanfelson.*—I beg the Court to take that down, "that he does not know the distance between the two islands."

*Solicitor General.*—I will put another question to him, by which I shall probably bring it to his memory, which will render it unnecessary to note what he said just now.

*Mr. Vanfelson.*—But as we are entitled to have all he says, I trust that his last answer will be taken down. We consider in addition that it is an important answer.

*Solicitor General.*—L'isle où vous avez laissé Kevény est elle plus en haut ou en bas de celle où vous avez attendu les canots ?

*Faye.*—L'isle où nous avons été attendre les canots étoit plus bas que celle où nous avons laissé Kevény mais je ne puis pas dire la distance.—Quelques jours après que nous étions sur l'isle, peut-être cinq ou quatre jours, nous avons vu approcher à terre un canot; et il y avoit dedans monsieur Archy,\* Monsieur De Reinhard le prisonnier actuel, monsieur Cadotte, monsieur Grant, et un nommé Jean Baptiste Desmarais, qui j'ai connus; avec d'autres qui je ne connoissois pas. Mainville, le bois brûlé, étoit là; aussi un Canadien nommé Rochon, et des hommes pour travailler.

*Chief Justice Sewell.*—Ce canot montoit-il la rivière ?

*Faye.*—Oui, il montoit la rivière au Lac la Pluie et gaignoit vers le Lac des Bois. Ils ont approché

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S. G.—Do you know the distance between the two islands; that is to say, the one where you had left Kevény and that where you stopped.

H. F.—I can not say. I do not recollect the distance between the island where we had left Kevény, and that where we stopped to wait for canoes.

\* The usual appellation by which Mr. Archibald McLellan was distinguished amongst the Canadian voyageurs.

de l'isle et partie d'eux sont débarqués, mais non pas tous—De Reinhard, le prisonnier, ne débarquoit pas, mais il a vu ce qui s'est passé, ou s'il ne l'a pas vu c'étoit parcequ'il ne regardoit pas.

*Solicitor General.*—Bon; à présent, dites à la Cour et à messieurs les jurés, tout ce qui s'est passé?

*Faye.*—Les personnes qui débarquoient m'ont demandé ce que j'avois fait du prisonnier Keveny; et j'ai répondu qu'on l'avoit laissé sur une petite isle: que le Sauvage qu'on nous avoit donné pour guide, l'avoit lui-même laissé-là, et après qu'il nous a eu laissés. Nous avons aussi dit que le Sauvage vouloit tuer Keveny. Quand monsieur Archy débarquoit, il m'a frappé avec la perche du canot, et en même tems La Pointe se sauva dans les bois, mais monsieur Archy l'a fait revenir et l'a battu aussi, disant, "que ce n'étoit pas notre affaire." En ce tems-là De Reinhard étoit dans le canot et auroit peut-être entendu ce qui se disoit à terre. Je ne puis pas dire qu'il l'a entendu, mais je penserois qu'il étoit assez proche pour l'entendre. Je ne puis pas dire la distance à laquelle le canot a resté loin de terre, mais je pense que j'aurois entendu si j'avois été dans le canot.

*Solicitor General.*—Qu'avez vous entendu par ces mots: "ce n'étoit pas vos affaires?"<sup>(45)</sup>

<sup>(45)</sup> *S. G.*—Is the island where you left Keveny, above or below that where you waited for canoes?

*H. F.*—The island where we waited for canoes, is lower than that where we had left Keveny, but I can not state the distance. Some days after we were on the island, perhaps five, or four days, we saw a canoe approaching. In it were Mr. Archy, Mr. De Reinhard the present prisoner, Mr. Cadotte, Mr. Grant, and one named Jean Baptiste Desmarais, whom I know; with others whom I did not know. Mainville, the *Bois Brulé* was there; also a Canadian of the name of Rochon, and men for working the canoe.

*C. J. S.*—This canoe—was it going up the river.

*Mr. Vallière de St. Réal.*—We must object to that question, as to what he (the witness,) might have understood by the words, though we might content ourselves, perhaps, that as yet they are not proved to have been uttered within hearing of the prisoner, and consequently could not affect him, let them be what they may.

*Solicitor General.*—I beg my learned friend's pardon, but we have proved that he was in a situation to see every thing, and therefore, certainly to hear every thing; at least, it is for the jury to say whether he did or not.

*Chief Justice Sewell.*—It by no means follows, that because he saw certain actions passing, that he must necessarily have heard a conversation that took place; indeed the witness does not say that he did hear, he only says, that perhaps he might have heard; but then surely it is as fair to suppose that perhaps he did not.

*H. F.*—Yes, they were ascending the river on their way to Lake la Pluie, and were going towards the Lake of the Woods. They came to the island, and part of them landed, but not all. De Reinhard, the prisoner, did not land, but he saw what passed, or if he did not, it was because he did not look.

*S. G.*—Good. Now tell the Court and the gentlemen of the jury all that passed.

*H. F.*—The party who landed, asked me what I had done with the prisoner Keveny; and I answered, that he had been left on a small island; that the Indian who had been given to us for a guide, had himself left him there, and that afterwards he had left us. We likewise said, that the Indian wanted to kill Keveny. When Mr. Archy landed, he beat me with a canoe-pole, and then La Pointe fled into the woods, but Mr. Archy made him come back again, and beat him also, saying, "that it was not our business." At that time De Reinhard was in the canoe, and might perhaps have heard what was said on shore. I can not say, that he did hear it, but I should think he was near enough to hear. I can not say at what distance the canoe lay from the shore, but I think I should have heard, if I had been in the canoe.

*S. G.*—What did you understand by the words, "it was not your business?"

*Solicitor General.*—I submit that we have, in this instance, proved every thing which it is ever possible in a case like this to prove. It is utterly impossible to go farther. We prove he was in a situation, he might have heard, and it is for the jury to say, whether he did or did not. The witness cannot convey himself into his head, and say positively that he did hear, but he does say all that man can with certainty, namely, that had he himself been there, he should have heard.

*Attorney-General.*—Your honour must have remarked the extreme caution of this man throughout the whole of his examination. Not an inch, if it is a question of distance, or a moment, if one of time, that he will speak with any degree of certitude to, though so very clear as to the events actually taking place. I should submit that we have gone far enough to entitle us to put the question proposed by my learned colleague.

*Chief Justice Sewell.*—It appears to me, and to my learned brother upon the bench with me, that we are here without any substratum, upon which the question itself can be founded, or a right to put it insisted upon. For what at present is proved, but that a canoe arrives with a number of persons, of whom one disembarks, and a conversation takes place between him and the witness, and another Canadian who was in his company, but no connection has been shewn to have existed between these people. Here is as yet no commencement by which you associate them.

*Solicitor General.*—I should consider after what we have shewn, although we may not have very directly proved a connection, that it forms a question upon which the jury will decide.

*Chief Justice Sewell.*—The jury undoubtedly will decide upon all that comes before them, but we are now to determine whether some circumstances

which you are desirous to produce, are proper to be submitted to them, whether you have proved sufficient to justify us in allowing them to be brought before the jury. Had De Reinhard been present, participating in the conversation, it would be another thing, but at present you prove nothing of the kind, not even that he heard the conversation, for the witness will not say whether he did or did not—indeed the commencement to this being evidence is wanting, namely, a proof of connection. It does not appear upon the evidence as yet, that De Reinhard heard what passed or even knew these men, it is probable that he did, but you have not shewn it.

*Attorney-General.*—I should submit that as we have proved that this man told M'Lellan that the cause of his quitting the savage, was his intention of killing Keveny, and also, that M'Lellan's observation "*qu'il ce n'étoit pas votre affaire,*" was made while De Reinhard was so situated that he might have heard, we have shewn sufficient to entitle us to pursue the course of examination taken by my learned friend; more I think we can not prove, for it is impossible absolutely to prove that a man hears a thing.

*Solicitor General.*—I will ask him whether he did tell M'Lellan why they quarrelled with the savage—avez-vous raconté à monsieur M'Lellan, pourquoi le sauvage vous a quitté? (\*\*)

*Mr. Justice Bowen.*—Had you not better let him recount his own story in his own way, and we shall then see whether any, and what part of it, is evidence.

*Mr. Stuart.*—I must object to that, except as he shall prove that De Reinhard was present;

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(\*\*) Did you relate to Mr. M'Lellan why the Indian had left you?

we can not consent to his being permitted to relate any thing, which is not positive and undeniable evidence, according to the strictest rules for its admission. We have a very serious duty to perform to the prisoner, and, feeling its weight, we can adopt no other course.

*Chief Justice Sewell.*—Nothing has been produced to shew, if even it were admitted that he heard the conversation, that he approved it. A man may certainly hear a conversation without approving it, and surely the mere hearing of a conversation can not attach criminality.

*Solicitor General.*—His conduct afterwards, will perhaps.

*Mr. Stuart.*—My learned friend, the Solicitor General, speaks of his conduct afterwards. If that connects him with these transactions, it ought to be brought forward now, for as yet there is nothing to do it.

*Chief Justice Sewell.*—The indictment we are trying is one for murder, and it also alleges on the part of the prisoner, M'Lellan and Mainville, a conspiracy to commit it, as well as the actual murder. To sustain that allegation, you must certainly shew a participation, either by act, word, or deed. At present you have done neither, but yet you wish to be permitted to go into a conversation in which you do not even assert that he shared, which you do not prove that he even heard, and, if he did, you bring no evidence to shew that he approved.

*Solicitor General.*—It is no matter to me whether he approved it or not, that is a point for the jury to decide on, from a view of the whole case.

*Chief Justice Sewell.*—But to us it is, and a very great matter too, for we can not allow you to pursue an examination upon a conversation that the prisoner did not share in; a conversation



which he might or might not have heard, and which, till you prove he heard, you certainly can not be prepared to shew that he approved.

*Solicitor General.*—Avez-vous embarqué dans le canot de monsieur Archy?

*Faye.*—Oui, je me suis embarqué et La Pointe aussi, dans le canot de monsieur Archy.<sup>(47)</sup>

*Solicitor General.*—Then I am to understand that your honours think I can not question him as to the conversation on shore.

*Chief Justice Sewell.*—Most certainly, that is my opinion, unless you shew by some evidence, that he heard it and approved of it. I do not know whether Mr. Justice Bowen concurs with me or not, but that is my opinion.

*Mr. Justice Bowen.*—An opinion in which I perfectly coincide, you can not by this witness prove that he even heard the conversation, and if you did, you must go farther before I should consider it admissible evidence against the prisoner. You should demonstrate by some act of his, that he approved as well as heard it. As the evidence stands at present, the prisoner appears to me in a situation, not dissimilar to that of a servant, in the canoe of his master. A conversation takes place between the master and some other persons, which he might not have heard, for it does not appear whether he did or did not, it is left completely uncertain, but if you went so far as to prove he heard it, does it necessarily follow that he approved the conversation? I consider the question as totally beyond the rules of evidence.

*Solicitor General.*—Then I return to the general examination, abandoning, as is my duty, after

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<sup>(47)</sup> S. G.—Did you embark in Mr. Archy's canoe?

H. F.—Yes, I embarked, and La Pointe also, in Mr. Archy's canoe.

your honour's decision, any questions relative to this conversation. Avez vous aperçu le Sauvage dans le canot?

*Faye.*—Oui, je l'ai aperçu ; avant d'embarquer je me suis aperçu que le Sauvage, c'est-à dire, José, *Fils de la Perdrix Blanche*, étoit dans le canot de monsieur Archy. Nous sommes partis vers Lac de la Pluie, et la même journée nous avons rencontré d'autres canots ; je ne sais pas exactement l'heure, je ne puis pas la dire.

*Mr. Vallière De St. Réal.*—Je soumetts à la cour, qu'il ne sait pas le tems, et que——<sup>(41)</sup>

*Solicitor General.*—My learned friend mistakes, he does know the time, for he fixes it to the very day ; he does not recollect the precise hour, indeed it is unreasonable to suppose that he would ; these people have no idea of time, except by the sun. C'étoit le même jour, n'est-ce pas ? que vous avez rencontré les canots ?

*Faye.*—Oui, c'étoit le même jour : auparavant nous ayons cherché l'isle où nous l'avions laissé, mais sans le trouver. Quelqu'un de notre canot, (mais ce n'est pas moi,) a demandé aux gens s'ils avoient connoissance du prisonnier Keveny, et ils ont répondu, qu'il étoit un peu plus loin en haut des Dalles ; il y avoit peut-être cinq ou six lieues de distance entre l'isle où nous avons laissé Keveny, et celle où nous l'avons trouvé. L'isle où nous l'avons laissé, est en bas des Dalles, et l'isle où nous l'avons trouvé est en haut

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<sup>(41)</sup> S. G.—Did you perceive the Indian in the canoe ?

H. F.—Yes, I did perceive him. Before I embarked I saw that the Indian, that is to say, Joseph, Fils de la Perdrix Blanche, was in Mr. Archy's canoe. We set off for Lake la Pluie, and the same day we met other canoes ; I do not know the hour exactly ; I can not say it.

Mr. V. de St. Réal.—I submit to the court that he does not know the time, and that——

des Dalles ; ce n'étoit pas moi qui demanda aux gens des canots de la rivière Cygne s'ils avoient connoissance de monsieur Keveny. Il y avoit quinze personnes dans notre canot. Monsieur Archy demandoit aux gens de la rivière Cygne, comment Keveny faisoit pour vivre, et quelqu'un, mais je ne puis pas dire qui, a répondu "il achète quand il peut, et quelques fois il vole ; il est en haut des Dalles."<sup>(42)</sup>

*Mr. Stuart.*—I feel obliged to enter my objection to these questions ; they certainly refer to nothing that can be evidence in the case, one way or the other, but I have very strong objections to this irregular mode of examining a witness.

*Solicitor General.*—No doubt the learned gentleman has objections to these questions, and so I expect he will to any which maké against the prisoner.

*Mr. Stuart.*—I merely object to these questions *professionally*, it is from no wish to conceal any part of the case, but the irregularity of the course my friend is pursuing, strikes me as being so apparent, that it would be a most culpable profes-

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<sup>(42)</sup> *S. G.*—It was on the same day, was it not ? that you met the canoes.

*H. F.*—Yes, it was the same day. We had before sought for the island where we had left Keveny, but without finding him. Some one belonging to our canoe (but it was not me,) asked the people whether they knew any thing of Keveny, and they answered that he was a little farther on above the Dalles. The distance between the island where we had left Keveny, and that where we found him, was perhaps five or six leagues. The island where we left him, was below the Dalles, and the island where we found him, was above the Dalles. It was not I who asked the people of the Swan River canoes, whether they knew any thing of Mr. Keveny. There were fifteen persons in our canoe. Mr. Archy asked the Swan River people, how Keveny managed to live, and some one, but I do not know who, answered "he purchases when he can, and sometimes he steals : he is above the Dalles."

sional remissness not to protest against it. If the Court decide against me, I have done; I have no desire to take up the time of the Court for a moment; it is a professional objection to the mode of examination, and not dictated by any apprehension of the consequences to the prisoner. But I will not trespass on the time of the Court, should they think it correct.

*Chief Justice Sewell.*—Not at all Mr. Stuart; we have just decided to the contrary. Why not, Mr. Solicitor, bring forward the unexceptionable part of your testimony? Why introduce a man the witness himself does not know who he was, and therefore can not prove a connection between the prisoner and the person speaking.

*Solicitor General.*—Qu'est-ce que De Reinhard a dit; vous en souvenez-vous?

*Faye.*—Je ne me souviens qu'est ce que De Reinhard a dit; je ne me souviens pas d'avoir entendu De Reinhart dire quelque chose en allant à l'isle où nous avons laissé Keveny avant de rencontrer les canots de la rivière Cygne; mais sur leur réponse qu'il étoit en haut des Dalles, lui (De Reinhard,) a dit, "qu'il l'avoit pris prisonnier et "si on le retrouvoit, qu'il n'auroit pas soin."

*Solicitor General.*—Etoit-ce en menace qu'il parloit?

*Faye.*—Je ne sais s'il l'a dit en menaces ou non.

*Solicitor General.*—Dites-nous les mots qu'il a parlé?

*Faye.*—Il dit "c'est moi qui l'ai pris prisonnier, et si je le retrouve, il en auroit soin."

*Solicitor General.*—L'avez-vous entendu dire autre chose?

*Faye.*—Je ne l'ai pas entendu dire autre chose alors. (\*\*)

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(\*) S. G.—What did De Reinhard say? do you recollect?

*Mr. Stuart.*—I wish that to be taken down.

*Solicitor General.*—Comment comprenez-vous ces mots : "qu'il en auroit soin."<sup>(51)</sup>

*Mr. Stuart.*—Surely the learned Solicitor General does not suppose that we can sit still and allow such a question to be put. It is extremely unpleasant to be compelled by professional obligation as well as by the imperious duty we owe to the prisoner, so frequently to oppose the mode pursued in the examination. I certainly did not expect that the Crown officers would have adopted a course so liable to interruption, and so very objectionable in every point of view.

*Solicitor General.*—Surely I may put the question I have proposed, or if, as in the present instance, an equivocal expression is made use of, how are we to attain the real meaning of the speaker, if a witness is not to be permitted to explain what he understood by an expression. Words have force and meaning, according to the manner in which they are uttered.

*Mr. Justice Bowen.*—The words made use of here, I think sufficiently explain themselves, "I

*H. F.*—I do not recollect what De Reinhard said. I do not recollect having heard De Reinhard say any thing in going to the island where we had left Keveny, before meeting the Swan River canoes, but upon their answering that he was above the Dalles, he, De Reinhard, said, "that he had taken him prisoner, and if he was found again he would not take care of him."

*S. G.*—Was it in the manner of a threat that he spoke?

*H. F.*—I do not know whether he said it by way of a threat or not.

*S. G.*—Tell us the words he made use of.

*H. F.*—He said "it was I who took him prisoner, and if he is found again, I will take care of him."

*S. G.*—Did you hear him say any thing else?

*H. F.*—I did not hear him say any thing else there.

<sup>(51)</sup> How do you understand these words, "that he would take care of him."?

"took him prisoner, and if I find him I'll take care of him."

*Mr. Stuart.*—I believe the words of the witness were "si on le retrouvoit qu'il n'auroit pas soin,"<sup>(52)</sup> which would certainly bear a very different import to "I'll take care of him."

*Mr. Justice Bowen.*—I have taken it down, and he said just now, I am confident, "c'est moi qui l'ai pris prisonnier, et si on le retrouvoit, qu'il en auroit soin."<sup>(53)</sup>

*Mr. Stuart.*—He said the other too, I only want just what he does say taken down; but I do wish that the whole of his answers may be taken just as he gives them.

*Solicitor General.*—Avez vous entendu quelqu'autre personne dire——<sup>(54)</sup>

*Mr. Stuart.*—I am really sorry to interrupt my learned friend so frequently, but I must object to this course. Indeed I may be permitted to say, I am surprised that one so contrary to all principles of law, should have been suggested by the learned Crown officers; and much more so, that it should be renewed after your honors have on the former, as well as the present trial, decided such questions to be inadmissible.

*Solicitor General.*—My learned friend argues upon the admissibility of a question which he did not hear, for before I had put it he objected. A very certain method to be sure, of excluding testimony; but, may it please the Court, I humbly contend, in a case like this, we ought not to be bound so strictly as if the affair had occurred in

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<sup>(52)</sup> "If he was found again, he would not take care of him."

<sup>(53)</sup> "It was I who took him prisoner, and if he was found again, he would take care of him."

<sup>(54)</sup> Did you hear any other person say——

this district, where proof would have been easily within our reach. I should imagine that every thing bearing on the justice of the case, might and ought to be admitted. We are only desirous to exhibit the whole of the facts, and we conceive we are pursuing the method best calculated to save the time of the Court, in the production of them. The case is not an ordinary one, and certainly we are entitled to every reasonable indulgence.

*Chief Justice Sewell.*—Why should the proceedings in this case, be different from those of others? Can you in any case go into evidence of a conspiracy for a particular purpose, before you prove the fact itself; most certainly not. Then what is there to distinguish this case so as to call upon us to invert, at least, (supposing for a moment the testimony to be admissible,) the order of receiving evidence, according to the usual practice, which practice is founded on the established and universally acknowledged rules for receiving evidence. The case has undoubtedly difficulties about it, but none that can justify, nor indeed call for, exemption from this very general rule; first prove a fact, and then strengthen it by corroborative testimony as much as you can.

*Attorney-General.*—I wish merely on this point to put one question to the witness, and I think it is one that is not liable to objection. *Ecoulez Faye*—Avez-vous entendu De Reinhard dire, après la mort de Keveny, “qu’il avoit fait son affaire.”

*Faye.*—Oui, je l’ai entendu. De Reinhard a dit cela.<sup>(55)</sup>

*Mr. Stuart.*—Certainly, your honours will not

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<sup>(55)</sup> *A. G.*—Listen *Faye*—Did you hear De Reinhard say, after the death of Keveny, “that he had done his business?”

*H. F.*—Yes, I did hear it. De Reinhard said so.

take that down as evidence, or permit the Attorney-General to put such a question. It is undoubtedly a *leading question*. We appear really to lose sight of the very first principles applicable to the law upon the subject of evidence when such questions are proposed.

*Chief Justice Sewell.*—Nothing can well be clearer than the rules for the examination of witnesses. They are three: 1st. that on an examination in chief, leading questions are not to be put: this is a fundamental rule. 2d. On a cross examination, as the witness is not supposed to be friendly, but that the bias of his mind may lead him to keep back perhaps a part of the truth, that restraint is not imposed, and for the purpose of extracting the whole truth it is permitted to parties in cross examination to put leading questions. 3d. Another rule in conducting examinations is, where your own witness is an unwilling witness and manifests an hostile disposition to the party who has made him a witness, the examination in chief under such circumstances, is permitted to assume the shape of a cross examination, but this must be the consequence of a manifest indisposition on the part of the witness amounting to an impracticability of obtaining by the usual mode of examination, those facts which he is in possession of, and which it is essential to the justice of the case, should be exhibited in evidence; these then being the rules to be observed in the examination of witnesses, there can be no difficulty in applying them, and certainly you can not be permitted to put a leading question on an examination in chief. It is the peculiar privilege of a cross examination, and that for the reason I have assigned, namely, a supposed bias which is unfavourable to the opposite party, on the mind of the witness. With the exception stated in the third rule, there can be no



right in an examination in chief to put what are called leading questions. Bring a circumstance to the mind of your witness that appears to have escaped it by general questions as long as you like; but you certainly can not be allowed to ask a witness, did you hear such a one say that he would cut that man's throat? or did you hear him say that he would finish that gentleman? undoubtedly you could not.

*Solicitor General.*—I should not consider them as leading questions.

*Chief Justice Sewell.*—Should you not? then I do not know one; and you and I can never agree as to what constitutes a leading question.

*Mr. Justice Bowen.*—You might put this question, did he or did he not hear any thing said, and by whom, and when, and if he answers affirmatively, you may then proceed to examine him as to the nature of what was actually said; this you can do.

*Mr. Stuart.*—That is the question undoubtedly that my learned friend may put, for any other, or one of the nature he attempted to put, when I felt compelled to object, might, if a witness was careless about sacrificing the truth, place us in a situation from which we might be completely unable to extricate ourselves. I trust the examination will be so conducted as to render future interruption unnecessary, as I assure the learned Crown officers, it is with extreme reluctance that I rise, and they, I am confident, will do me the justice to believe that nothing but a sense of duty from which I dare not shrink has produced the frequent interruptions which I have made already.

*Solicitor General.*—Avez vous entendu De Reinhard dire rien autre chose?

*Faye.*—Oui, il a dit que "si on le retrouvoit qu'il n'auroit pas soin." Je ne lui ai pas en-

tendu dire autre chose alors ; je me rappelle que De Reinhard a dit, après que Keveny étoit mort, " qu'il avoit fait son affaire : " auparavant que nous sommes rendus à terre, Mainville a dit, et je l'ai entendu, que si on le trouvoit, qu'il tueroit Keveny, et qu'il auroit les bottes et le chapeau ; et d'autres ont dit qu'ils prendroient les hardes, les habits et la chemise. De Reinhard n'a rien dit, et je ne sais pas s'il avoit connoissance de la conversation ; je ne sais pas s'il l'a entendue. Il étoit assis dans le canot sur le même banc avec les bourgeois, il étoit aussi proche que moi, et je l'ai entendu, mais je ne sais pas s'il l'a entendu.<sup>(56)</sup>

*Mr. Stuart.*—I beg that may be taken down, he says, I do not know whether De Reinhard heard or no.

*Solicitor General.*—I do not want it taken down, it forms no part of an answer to any question I have put to the witness, and therefore it is completely unnecessary ; the witness is in my hands, and I do not think it necessary that it should be taken. Avez vous débarqué ?<sup>(57)</sup>

*Mr. Stuart.*—I certainly must object. With all due respect for the Crown bench ; and no gentleman respects it more than myself—we stand here

(56) *S. G.*—Did you hear De Reinhard say nothing else ?

*H. F.*—Yes : he said that " if he were found again he would not take care of him." I did not hear him say any thing else then. I remember that De Reinhard said, after Keveny was dead, " that he had done his business." Before we got on shore, Mainville said, and I heard him, that if he were found, he would kill Keveny, and that he would have the boots and the hat, and others said that they would take the clothes, the coats, and the shirt. De Reinhard said nothing, and I can not tell whether he knew of the conversation. I do not know that he heard it. He was sitting in the canoe on the same bench with the gentlemen. He was as near as I was, and I heard it, but I do not know whether he heard it.

(57) Did you land ?

upon equal terms, I know of no difference, and I do not understand dictation, nor will I submit to it; and I think I see something very like it. We have a most trying duty to perform, and I should be unworthy of the gown I am honoured with, if I admitted any thing like the conduct of which I think I have a right to complain; it is alike, in my humble opinion, incompatible with good manners, as well as the accustomed practice of the Court.

*Solicitor General.*—I beg to say that I consider it neither consistent with good manners, any more than with the custom of the Court, that an interruption should be made and allowed, whilst I am putting a question; and it is not the first time that these interruptions have been made; they are certainly very irregular to apply no harsher epithet to them, and being equally irreconcilable to good manners as to the practice of the Court, I trust my learned friends will abstain from them.

*Mr. Stuart.*—I conceive that in insisting that the answer of a witness should be taken down entirely as he gave it, I did not at all deviate from either the rules of politeness or of practice in this Court.—A part of that answer the Solicitor General wishes to pass over.

*Chief Justice Sewell.*—Allow me to interrupt you Mr. Stuart: the answer was taken down entirely, I have got every word of it.

*Mr. Stuart.*—I beg the Court's pardon, I have done; that was all I desired.

*Solicitor General.*—Avez vous débarqué à terre où l'on vous avoit dit que vous trouveriez monsieur Keveny?

*Faye.*—Oui, après que nous étions arrivés là où étoit Keveny, nous sommes débarqués, et monsieur Grant a été donner la main à Keveny; nous avons été dans un camp des Sauvages ensuite; après monsieur Archy nous a dit—

*Chief Justice Sewell.*—“ Nous a dit,” qui entendez vous par nous ?

*Faye.*—La Pointe et moi-même : monsieur Archy nous a dit d'embarquer dans son canot, disant en même tems qu'il n'avoit pas de place pour amener Keveny dans son canot. De Reinhard a dit s'il avoit un canot qu'il n'auroit pas de soin de le prendre au Lac la Pluie. Je m'embarquois avec monsieur Archy, et nous sommes tous partis, à l'exception de De Reinhard, Mainville et Joseph, Fils de la Perdrix Blanche, que nous avons laissés à terre avec Keveny. Après, nous avons marché environ deux ou trois lieues, et nous sommes débarqués, et nous avons couché là ; quelque tems après qu nous ayons débarqué, j'ai entendu un coup de fusil du bord d'où on venoit : en ce tems là, nous étions entre les Dalles et le Portage des Rats. Je ne sais pas si nous étions plus proche des Dalles, ou du Portage des Rats, mais nous étions alors entre les deux endroits. Quelque tems après, une demi heure je pense, j'ai vu un canot venir vers nous à terre ; c'étoit peut-être une heure après avoir entendu le coup de fusil, que j'ai vu le canot approcher à terre—il y avoit dedans De Reinhard, Mainville et José, le Fils de Perdrix Blanche, Keveny n'y étoit pas. Monsieur Archy, monsieur Cadotte, monsieur Grant et un autre homme se sont avancés ; et on demandoit, et l'ai entendu, mais je ne puis pas dire le quel, “ce qu'ils avoient fait du prisonnier “Keveny” ? Quelqu'un dans le canot a répondu, “il est bien où nous l'avons mis ;” mais je ne sais pas lequel d'eux a ainsi répondu, à ce tems De Reinhard étoit dans le canot, le petit canot qu'auparavant on avoit acheté des Sauvages. Ce n'étoit pas le Sauvage qui le dit, je pense, parceque je ne crois pas que José, Fils de Perdrix Blanche, parloit françois assez pour répondre comme

cà ; mais je ne puis pas dire lequel d'eux, (c'est-à-dire de Mainville ou De Reinhard,) l'a dit. Il disoit "il est bien caché où nous l'avons mis." Le canot étoit plein de sang, et j'ai vu dans le canot les hardes de Keveny remplies de sang. Je les ai connus pour les avoir vu sur lui auparavant. Je n'avois pas remarqué qui débarquoit premièrement, mais ils ont débarqué tous les trois. C'étoit Mainville qui débarquoit les hardes, et j'ai alors demandé à Mainville "ce qu'on avoit fait du prisonnier Keveny," et Mainville a répondu, "que lui et De Reinhard l'avoient tué." De Reinhard étoit alors dans le même endroit, à la distance de la moitié de cette chambre-ci, plus ou moins ; la moitié de la longueur de cet appartement. Mainville disoit "que lui et De Reinhard l'avoient tué." Nous étions dans le même endroit, campés tous ensemble, mais je ne sais pas si De Reinhard entendoit ou non. De Reinhard a dit, et je l'ai entendu, que "C'est un service qu'il a rendu à cet homme (Keveny)." De Reinhard ne m'a jamais dit qu'il l'avoit tué. Mainville m'a dit ces mots "c'est lui qui l'avoit tué." C'étoit assurément Mainville seulement qui m'a dit : "C'est lui et De Reinhard qui l'avoient tué. De Reinhard ne m'a jamais dit que "c'est lui qui l'avoit tué." (21)

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(21) S. G.—Did you land where you were told that you would find Mr. Keveny?

H. F.—Yes ; when we arrived where Keveny was, we landed, and Mr. Grant went and shook hands with Keveny. We were afterwards at an Indian encampment : after that Mr. Archy told us—

C. J. S.—"Told us." Who do you understand by us?

H. F.—La Pointe and myself. Mr. Archy told us to embark in his canoe, saying at the same time that he had no room to take Keveny in his canoe. De Reinhard said that if he had a canoe he would not care to take him to Lake la Pluie. I embarked with Mr. Archy, and we all took our departure, with

*Mr. Stuart.*—I trust the Court have got these answers of the witness, for we consider them very important.

*Chief Justice Sewell.*—I will read to him his evi-

the exception of De Reinhard, Mainville, and Joseph, Fils de la Perdrix Blanche, whom we left on shore with Keveny. Afterwards we proceeded about two or three leagues, and then we landed, and we slept there. Some time after we had landed I heard a gun go off in the quarter whence we came. At that time we were in the Dalles and the Portage des Rats. I do not know whether we were nearer to the Dalles or to the Portage des Rats, but we were then between the two places. Some time after, I think half an hour, I saw a canoe approaching the shore where we were. There were in it, De Reinhard, Mainville, and Joseph, Fils de la Perdrix Blanche. Keveny was not there. Mr. Archy, Mr. Cadotte, Mr. Grant, and another man, came forward; and it was asked, and I heard it, but I can not tell by whom, "what they had done with the prisoner Keveny?" Some one in the canoe answered "he is well where we have put him," but I do not know which of them it was who gave this answer. At that time De Reinhard was in the canoe, the small canoe which had before been purchased from the Indians. I do not think it was the Indian who said so, as I do not believe that Joseph, Fils de la Perdrix Blanche, speaks French enough to have answered in that way; but I can not say which of them, (that is to say, of Mainville and De Reinhard,) it was who said it. He said "he is well hid where we have put him." The canoe was full of blood, and I saw Keveny's clothes in the canoe, covered with blood. I knew them from having before seen him wear them. I did not observe who landed first, but they all three came on shore. It was Mainville who landed the clothes, and I then asked Mainville "what had been done with the prisoner Keveny," and Mainville replied "that he and De Reinhard had killed him." De Reinhard was then in the same place, at the distance of half of this chamber, more or less. The half of the length of this room: Mainville said "that he and De Reinhard had killed him." We were all in the same place, encamped all together, but I do not know whether De Reinhard heard or not. De Reinhard said, and I heard him, "it is a service I have rendered to that man, Keveny." De Reinhard never told me that he had killed him. Mainville said these words to me, "It is he who killed him." It was most certainly Mainville only who told me "that it was he and De Reinhard who had killed him." De Reinhard never told me "that it was he who had killed him."

dence as I have taken it, I think I have it correctly; If he wishes then to explain or qualify any part of it, he can.

*The Chief Justice then read the witness's testimony, beginning at "le canot étoit plein de sang," and witness admitted it to be correct.*

*Solicitor General.*—There is one little word which I think your honour has mistaken the witness in, and which occasions a considerable difference from what the witness, I believe, intended to say.

*Chief Justice Sewell.*—Yes, a very little word will certainly make all the difference; whether he said *je* or *il* is certainly a very material point, but I have read to him his testimony, he admits it to be correct, and I believe it is, for I have strove to take all he did say; I will however read it to him again, and he may add to, or explain, it how he likes, but I can not alter what I have already taken.

*The evidence was read by the Chief Justice, and the witness again admitted its correctness.*

*Examination continued by the Solicitor General.*

J'ai vu le sabre de De Reinhard; il a essuyé son sabre qui étoit ensanglanté—il étoit à terre alors, et au tems qu'il a essuyé le sabre, il disoit ces paroles "c'est un service qu'il a rendu:" nous étions alors tous ensemble près du feu. Il y avoit fait un partage du butin de Keveny, et De Reinhard les avoit séparés. De Reinhard a ouvert les valises de Keveny. Keveny avoit trois ou quatre valises, et De Reinhard les ouvroit—J'ai reconnu les valises comme les mêmes que j'avois vues auparavant, en la possession de Keveny. De Reinhard a ouvert les valises—il y avoit trois ou quatre que De Reinhard avoit ouvertes. Il les avoit ouvertes avec des clefs; j'ai vu auparavant des clefs dans la main de Keveny, et j'ai vu des

clefs dans la main de De Reinhard, mais je ne puis pas dire que c'étoient les mêmes clefs; mais De Reinhard les a ouvertes (c'est-à-dire les coffres) avec les clefs qu'il avoit dans sa main, et je l'ai vu. De Reinhard a tiré les hardes et le butin hors des valises: il les a séparés: le meilleur du butin, il l'a choisi lui-même, et l'a caché dans les bois; le mauvais, il l'a mis d'autre côté.—Les Métifs vouloient avoir des chemises fines; mais il ne vouloit pas leur en donner, disant que ce n'étoit pas nécessaire pour le présent, et, qu'arrivé au poste; il leur donneroit de bonnes chemises de coton.—Les Métifs ont répondu que s'ils ne pouvoient pas avoir des chemises fines, qu'ils n'en vouloient pas d'autres. Ils disoient à De Reinhard que s'il ne vouloit leur donner des chemises fines, qu'ils n'en voudroient point du tout: et De Reinhard les a cachées toutes dans les bois. De Reinhard n'a rien dit de plus—il y avoit du sucre blanc et du thé. Monsieur Archy ne vouloit le thé, mais le sucre blanc a été mis dans sa tente.<sup>(50)</sup>

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(50) I saw De Reinhard's sword. He wiped his sword which was bloody. He was then on shore, and at the time when he wiped his sword, he said the words "It is a service which he had rendered." We were then all together at the fire. A division was made of Keveny's things, and De Reinhard divided them. De Reinhard opened Keveny's trunks. Keveny had three or four trunks, and De Reinhard opened them. I recognized the trunks to be the same which I had before seen in the possession of Keveny. De Reinhard opened the trunks. There were three or four which De Reinhard had opened. He had opened them with keys. I had before seen keys in Keveny's hand, and I saw keys in De Reinhard's hand, but I can not say that they were the same keys; but De Reinhard opened them (that is to say the trunks,) with the keys which he had in his hand, and I saw it. De Reinhard took the clothes and things out of the trunks: he divided them. The best of the things he chose himself, and hid them in the woods. The bad ones he put on one side. The *Metifs* wanted to have some fine shirts; but he would not give them any, saying that it was not then



*Mr. Stuart.*—We certainly can have nothing to do with that in this case—we are not defending Mr. Archy.

*Solicitor General.*—Avez-vous vu les habits de Kevény dans le canot?

*Foye.*—Mainville m'a montré l'habit de Kevény, il étoit marqué du trou d'une balle et d'un sabre.<sup>(\*)</sup>

*The coat was here offered to be produced.*

*Mr. Stuart.*—I feel myself called upon by professional duty to object to any evidence being admitted of occurrences, subsequent to the supposed death of the man, till his death is proved. At present it appears to me that the Crown Lawyers have completely overlooked the most important point for them to prove, namely, that the man is actually dead—not a tittle of evidence have they produced as to the death. I beg to observe that the objection I make, is rather the objection of a counsel, made for the sake of preserving regularity in the proceedings, than with any view to benefit the prisoner, or with any reference indeed to him at all. I speak for myself, and I believe my learned friends who are with me, coincide in the opinion that, not on account of the prisoner, for we wish the whole truth to be brought out, but for the sake of regularity, no evidence ought to be produced of events posterior to the death, till

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necessary, and that when he arrived at the post, he would give them good cotton shirts. The Metifs replied that if they could not have fine shirts, they would not have any others. They said to De Reinhard that if he would not give them fine shirts, they would not have any at all; and De Reinhard hid them all in the woods. There was some white sugar and some tea. Mr. Archy would not have the tea, but the white sugar was put in his tent.

<sup>(\*)</sup> *S. G.*—Did you see Kevény's clothes in the canoe?

*H. F.*—Mainville shewed me Kevény's coat. It had the hole of a ball, and of a sword.

that fact is proved—I repeat that this objection is not made with a view to keep any thing from the jury, but to conduct the proceedings in that regular method which we consider indispensable; the mode is certainly, to first demonstrate the actual death of the person charged as having been murdered, and of which as yet, no evidence has been offered, and then adduce any corroborative testimony you can—if any other course is allowed, the whole business may end in smoke, after three or four days examination of witnesses as to facts supposed to be connected with a death, which is not even proved to have taken place.

*Solicitor General.*—I must confess I am somewhat surprised that the learned gentleman thinks we have given no evidence of the death of this unfortunate man. I think we have already produced pretty strong evidence of it; indeed I can not conceive that, under the circumstances, it could be well possible to adduce stronger.—But the principle upon which the learned gentleman has contended is erroneous. It is not necessary to substantiate a charge of murder, that the body should be seen. I admit that it is desirable, but that it is not indispensable, is supported by various authorities. My friend, Mr. Chitty, lays it down, and cites authorities in support of it, but it is perhaps unnecessary that I should trespass on the time of the Court, to produce authorities on a point so clearly established. But, in looking to this case, we shall see that better evidence of the death could hardly be produced than this. It is not as if there had been a coroner to have viewed the body, and by his jury, have returned a verdict of how he came by his death. A verdict assisted in its formation by the opinion of a surgeon, as to the immediate and actual cause of the death. The principle therefore upon

which my learned friend has founded his argument, is not one that is tenable, for it is competent for the Crown to adduce, in the absence of that positive testimony, which the body having been seen, enables the prosecution to exhibit, that secondary evidence to which, from the circumstances of the case, we have been compelled to resort, and I think stronger, or more positive evidence could not have been brought forward. That, however, is the province of the jury to decide on. I therefore refrain from any observations on that subject.

*Mr. Stuart.*—My learned friend, the Solicitor General, has mistaken the objection which I made. It was not to the method by which it was proposed to prove the death, but my objection to the evidence being admitted; which the learned Solicitor was about producing, was made, because no evidence had been offered to establish that fact, which must form the substratum of all the subsequent evidence. The first step is undoubtedly to prove the death, and then introduce any subsequent facts, but at present we are proceeding by a sort of hop, skip, and a jump, to facts that took place subsequent to this alleged murder, and seem to forget that there is no testimony to establish the death. For aught we know from the evidence as it stands, the man may be alive, nothing has been shewn to the contrary. My learned friends, the Crown officers, undoubtedly have evidence of the death in their possession, then why not produce it? I do not for a moment imagine that an indictment for murder has been prepared without evidence of the actual death being in the hands of the Crown officers. I could not suppose that an indictment for murder had been brought by my learned friends, unless, by the most positive testimony, the perpetration of

the offence had been rendered apparent to them. They can no doubt prove the death. Doubtless they have in their hands irrefragable evidence of it—I could not do my learned friends the gross injustice to suppose, for a moment, that they had brought forward this indictment without evidence of the actual death; but my objection was merely to this point, for the sake of regularity, that evidence of occurrences subsequent to the death, could not be introduced till the fact of the death itself had been proved. I trust my learned friends will do me the justice to believe me incapable of entertaining, for a moment, an opinion so unwarrantable, as that they could have brought the prisoner to trial, without being in possession of the most satisfactory testimony of the death; but as they undoubtedly have it, I contend it ought to be produced, and that till they do prove the death, as it forms the substratum of the case, they ought not to be allowed to exhibit evidence of occurrences posterior to the supposed fact. I should consider that the very first step on an indictment for murder, would be to prove the death, but without, I repeat it, one tittle of evidence from which even the death can be inferred, not even so much as the body being seen, my learned friends propose to go into evidence as to circumstances which, as they allege, took place subsequent to it. Surely such a cause can not be regular; and I therefore object to it, but on behalf of myself and my learned friends, who concur with me as to its validity, I assure the learned Crown officers, that it is purely a professional objection, and is not made with the most remote idea of excluding any part of the evidence which they may intend to produce; on the contrary, our view is rather to urge upon them the necessity of producing

what we fear they have overlooked, namely, evidence of the death of the man.

*Attorney-General.*—We consider that we are shewing, in a way that it is perfectly competent for us to adopt, and by very strong evidence, that the man is actually dead; the jury, however, will decide upon that as they think proper, but that this secondary evidence may be adduced, is apparent from various authorities which might be cited, but which perhaps the Court will consider it unnecessary that I produce, but I may be permitted to refer to Mr. Chitty on this subject, as the opinion he gives, that, although desirable, it is not indispensable that the body should be seen, is supported by reference to the authorities upon which it is founded.

*Attorney-General here read Chitty, vol.      page,*  
and argued, that if ever there was a case in which this secondary evidence were admissible, certainly this was such a case.

*Chief Justice Sewell.*—The general rule has been never to convict for murder or manslaughter, unless the fact can be proved to be done, or the body at least were found; this doctrine has been supported by Hale and others, but it is sometimes impossible that this can be done, and we must then resort to secondary evidence of that which we can not prove by the more positive testimony. Supposing, for instance, the case of a man being drowned, and carried away by the stream, so as never to be seen, or that of a man being murdered and afterwards burned to ashes, so as to render it totally impracticable to say that it was the remains of a man. I merely suppose or put these cases to shew, and to prove, that the secondary evidence may be resorted to when the primary can not be produced; indeed it must be so, or in many cases conviction never could take place.

Well then, let us now examine the point in question, and apply this rule to it. Your objection, or the objection of Mr. Stuart, I take to be this: A coat is produced which is supposed to have been on his back at the moment the alleged murder is charged to have been committed, and the Crown officers, I imagine, purpose exhibiting by these garments, some evidence of the manner in which the deceased met his death; to this it is objected, that till the death is proved it is incompetent to the Crown officers to go into evidence of this nature.—From the circumstance of the impossibility of exhibiting the primary or more positive testimony, the Crown officers contend they have a right to produce secondary evidence, and they most certainly have. But, I confess I consider the order inverted by the course that is taken. I understood the Attorney-General in his opening to say that he had a confession of the prisoner's own. It might probably have been as well if that confession had been proved as perhaps it would have been enough to establish the fact, that Mr. Stuart contends you ought to establish, and then this evidence would have been merely confirmatory.—I beg to be understood as giving no opinion on the subject, very far from it.—I dare say the Crown officers have substantial reasons for the course they have thought proper to adopt, no question but they have, and I have not the slightest wish to interfere with it, for the knowledge of all the facts being in their possession, they have undoubtedly selected, according to their judgment, the course best calculated to attain the ends of public justice, and I certainly shall not do more than hint that, if consistent with their plan of conducting the prosecution, to prove the confession, it might perhaps save time, but I beg I may not be supposed to have the most distant desire, gen-

lemen, to take out of your hands the right belonging to your official situation of public prosecutor, or in the smallest degree to intrench upon it. Relative to the objection itself, I do not, Mr. Stuart, think it good at present. The coat is produced as being that which the deceased wore at the time the witness last saw him, rather than to prove any thing that took place after the alleged murder, and as such is certainly admissible. What the subsequent evidence may be, it is not for us to anticipate, but at present I consider it to be perfectly competent evidence.

*Mr. Stuart.*—I am sorry to occupy the time of the Court, but I believe the Crown officers intend to offer by this witness, testimony relative to this coat, which occurred after the time at which the alleged murder is supposed to have been committed, and it was under this impression that, under a sense of professional duty, I objected to that evidence being introduced, till the death was proved.

The course suggested by your honour, appears to me to be not only the most advantageous, but really the only regular one, but it is to us, except for the sake of regularity, completely indifferent, what course is adopted. We therefore do not press, (as indeed after your honour's decision, it would be highly improper to attempt to press,) the objection I had the honour of submitting to the Court.

*Examination continued by the Solicitor General.*

*Faye.*—L'habit qu'on me montre actuellement je crois être l'habit de Keveny. C'est l'habit qu'il avoit coutume de porter quand il voyageoit. Au tems que je l'ai vu sur lui, il étoit plus neuf. Je l'ai eu en échange avec La Pointe, et je l'ai por-

te long tems. L'habit étoit dans le petit canot dans lequel le prisonnier, Mainville, et le Sauvage, sont arrivés à terre. Mainville l'a porté à terre avec les autres hardes et butin. C'étoit lui qui a débarqué tout ce qui étoit dedans, et non pas monsieur De Reinhard. Monsieur De Reinhard étoit commis, et les commis ne travaillent pas. Monsieur Kevény avoit coutume de porter cet habit quand il étoit avec moi. Mainville m'a montré dans cet habit les trous qu'il disoit être des coups de sabre, et le trou fait par une balle de fusil.<sup>(\*)</sup>

*Mr. Stuart.*—What Mainville may have said, certainly can not be evidence against us. Indeed I do not see what effect this old coat is to have upon the case at all.

*Solicitor General.*—I will state why this evidence is adduced, and it is offered simply for this reason, and the jury will judge what weight it ought to have upon the case. Here is a coat which we prove he was in the habit of wearing when travelling, that he had it when this witness was with him, and it is found in the canoe in which the prisoner arrives without Kevény, though the last time Kevény was seen, it was in the company of the prisoner. We simply prove the fact, the jury will infer from it what they think proper.

(\*) I believe the coat which is now shewn to me, to be Kevény's coat. It is the coat which he used to wear when he travelled. When I saw him have it on it was new. I had it in exchange from La Pointe, and I wore it a long time. The coat was in the little canoe in which the prisoner, Mainville, and the Indian, came on shore. Mainville carried it on shore, with the other clothes and things. It was he who took on shore all there was on board, and not Mr. De Reinhard. Mr. De Reinhard was a clerk, and the clerks do not work. Mr. Kevény used to wear this coat when he was with me. Mainville pointed out to me in this coat the holes which he said were the cuts of a sword, and the hole made by a musket ball.





*Examination continued by the Solicitor General.*

*Faye.*—C'étoit De Reinhard qui divisoit les effets qui étoient dans les valises, et Mainville a pris de lui même les habits et les choses qui n'étoient pas dans les valises.

*Chief Justice Sewell.*—Comment étoit habillé Kevény, le jour que vous l'avez laissé avec De Reinhard, Mainville, et José, Fils de la Perdrix Blanche?

*Faye.*—Il étoit bien habillé avec un habit bleu.<sup>(12)</sup>

*Examination continued by the Solicitor General.*

*Faye.*—De Reinhard m'a défendu de parler de cette affaire. Il m'a dit, quand nous sommes partis du Lac la Pluie, environ un mois et demi après, pour le Fort William, de ne pas parler si on rencontroit des gens du Milord Selkirk, de la mort de Kevény. Il m'a défendu de parler qu'il avoit tué Kevény.

*Chief Justice Sewell.*—Qu'il avoit tué Kevény, ou de la mort de Kevény?

*Faye.*—De la mort de Kevény et du coup arrivé dans la rivière Winnipic. Reinhard n'est pas descendu avec moi alors du Lac la Pluie.<sup>(13)</sup>

(12) *H. F.*—It was De Reinhard who divided the effects which were in the trunks, and Mainville took the coats, and other things which were not in the trunks, of his own accord.

*C. J. S.*—How was Kevény dressed the day you left him with De Reinhard, Mainville, and Joseph, Fils de la Perdrix Blanche?

*H. F.*—He was well dressed, in a blue coat.

(13) *H. F.*—De Reinhard forbade me to speak of this business. When we went away from Lake la Pluie, about a month and a half after, to go to Fort William, he told me, if we met the people of Lord Selkirk, not to talk of the death of Kevény. He forbade me to say that he had killed Kevény.

*C. J. S.*—That he had killed Kevény, or of the death of Kevény?

*Solicitor General.*—I submit to your honours, that there is now evidence sufficient, to entitle us to go into the conversation between the witness and M'Lellan, relative to the treatment experienced by witness for having prevented Joseph, Fils de la Perdrix Blanche, from killing Keveny. The first piece of evidence to entitle us to do so, is that it took place within the hearing of the prisoner, and if we do not do it now, we shall, after we have proved his confession, have to call this witness again, as in the confession he relates the conversation to have taken place in his hearing.

*Mr. Stuart.*—I must still object to such evidence; as to the pretended confession, of which my learned friend speaks, it is the same I suppose as a printed paper, which I held in my hand, a paper which it would have been more to the credit of persons of certain rank, if it had never appeared, for I can not refrain from saying, that I consider its publication as disgraceful, and calculated only to prejudice the public mind, and endanger the safety of a fair and equitable trial.

*Solicitor General.*—I really must interrupt the learned gentleman. We are making no reference to a printed paper; when I speak of a confession, I speak of a confession in the hand writing of the prisoner, and I may be permitted to remark on the subject of printed papers, or any desire to prejudice the public mind, that my learned friend the Attorney-General most distinctly told the jury in his opening speech, that they were totally to dismiss every thing from their minds which they might have heard upon the subject. I therefore trust, that we shall hear no more on the subject

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*H. F.*—Of the death of Keveny, and of the matter that had happened in the River Winnipic. Reinhard did not then come down with me from Lake la Pluie.

of endeavours to prejudice the public, or of interrupting the regular and pure course of public justice.

*Mr. Stuart.*—When I make these observations, I do not apply them to the learned Crown lawyers. I could not, for I know them to be incapable of meriting such an accusation, as an endeavour to pervert the pure stream of national justice; but when I see in a printed publication, on a subject connected with the interests of the private prosecutor, that very confession, which, in the exercise of his official duty as a magistrate, he had taken, I can not refrain from saying, that it is to be feared he has overlooked his duty, and has published it, for how else could it have got to the world, and I am not to be restrained by any consideration for the elevated rank of this magistrate, on the contrary that ought to have operated as a security for the most accurate fulfilment of the duties imposed upon him, particularly as, from the peculiar delicacy of his situation, one would have imagined he must have felt most anxious that no part of his conduct should be exposed to the shadow of suspicion; but the motives for such a publication are too glaring to be misunderstood, and I repeat that it would have been more consistent with the distinguished rank of the magistrate, if it had never appeared. As to the conversation it can not be evidence; when this pretended confession is offered, we shall have an opportunity of meeting it, and therefore, till then, I refrain from taking any notice of it.

*Examination continued by the Solicitor General.*

Qu'est ce que De Reinhard a dit au tems que vous avez rencontré les gens de la Rivière Cygne?  
*Fays.*—Il a dit qu'il l'avoit pris prisonnier et

que si on le retrouvoit, qu'il n'auroit pas soin.<sup>(44)</sup>

*Chief Justice Sewell.*—We have got that before.

*Solicitor General.*—Qu'est-ce que Mainville a dit?

*Faye.*—Mainville a dit——<sup>(45)</sup>

*Mr. Stuart.*—That wo'nt do indeed. What have we to do with what Mainville or any body else has said. I really did hope my learned friend would not have attempted this course again.

*Solicitor General.*—It was said in his hearing, and I beg leave to contend, that it entitles me to introduce it as evidence against the prisoner.

*Mr. Stuart.*—Oh, because it was said in our hearing it is to be evidence, but I beg to say, that every thing said in my hearing is not necessarily to belong to me. If a man chooses to talk high-treason in my hearing, I am not necessarily to be hung for it, but, if this doctrine is sound, I should be.

*Chief Justice Sewell.*—No, that does not follow; but, if in your hearing a man says, you helped me to cut another man's throat, that might certainly be shewn to have been so said, and they might go further, and prove what you said upon hearing it, and according to what that proved to be, would be the effect such language in your hearing would have upon you.

*Solicitor General.*—Qu'est-ce que vous avez entendu Mainville dire?

*Faye.*—Je l'ai entendu dire qu'il tueroit Keveny. Il parla qu'il avoit l'intention de tuer Keveny le

<sup>(44)</sup> What did De Reinhard say at the time you met the Swan River people?

*H. F.*—He said that he had taken him prisoner, and if he was found again he would not take care of him.

<sup>(45)</sup> *S. G.*—What did Mainville say?

*H. F.*—Mainville said——

même jour, et le jour auparavant que Keveny est mort.<sup>(\*)</sup>

*Mr. Stuart.*—That assuredly is not evidence against us.

*Chief Justice Sewell.*—No, certainly, but it may be for you, and very strong too, and therefore I take it.

*Cross examination conducted by Mr. Vanfelson.*

*Faye.*—La première fois que j'ai vu Keveny j'étois dans la rivière Winnipic. Il étoit aux fers avec des *Bois Brûlés* dans un canot.—J'étois alors dans un canot commandé par Mr. Cadotte. Monsieur Cadotte est un commis dans la société du Nord-Ouest. Monsieur M'Donell étoit en compagnie avec nous dans un autre canot. Monsieur M'Donell a fait ôter les fers de Keveny, et il a déjeuné avec Monsieur M'Donell. Je ne sais pas que Monsieur Keveny s'est plaint à Monsieur M'Donell, ni que les *Bois Brûlés* ont dit que Monsieur Keveny avoit tué trois hommes.—Monsieur M'Donell est un des Bourgeois de la Société du Nord-Ouest, et il a donné à Monsieur Keveny une bouteille de vin et une bouteille de Rum. Au lieu d'envoyer Keveny avec les *Bois Brûlés*, Monsieur M'Donell l'a mis dans le canot avec moi et La Pointe.—Nous n'avions pas envie d'aller, parceque les *Métifs* nous ont dit qu'il étoit malin ou mauvais; mais nous étions commandé d'aller, et le sauvage nous étoit donné pour nous servir de guide pour le Lac la Pluie. En voyage, le deuxième ou troisième jour, Keveny étoit incommodé, parceque le sauvage avoit essayé de le tuer. Le sauvage ne parloit pas

(\*) S. G.—What did you hear Mainville say?

H. F.—I heard him say that he would kill Keveny. He spoke of his intention to kill Keveny the same day, and it was the day before the death of Keveny.

François, et je ne parle pas le langage sauvage. Le sauvage avoit fait des signes de vouloir le tuer, et Keveny s'étoit fâché contre nous. Le sauvage a dit que monsieur M'Donnell seroit content, s'il le tuoit. Il disoit en François "en tuant *saguenash*, monsieur M'Donnell sera content." J'ai compris par "*saguenash*" un "Anglois," mais je ne connoissois pas alors le nom de Keveny. Je sais que le sauvage *José*, pendant que Keveny étoit en charge de La Pointe et de moi, a fréquemment voulu tuer Keveny : je ne me rappelle pas d'avoir vu La Pointe et le sauvage avec des bâtons à la tente de Keveny, je n'ai pas connoissance que le sauvage La Pointe et un autre, étoient à la tente disant au même tems qu'ils tueroient Keveny, (<sup>67</sup>).

(<sup>67</sup>) The first time I saw Keveny, I was in the River Winnipic. He was in irons with some *Bois Brûlés* in a canoe. I was then in a canoe, commanded by Mr. Cadotte. Mr. Cadotte is a clerk of the North-West Company. Mr. M'Donell was in company with us in another canoe. Mr. M'Donell caused the irons to be taken off from Keveny, and he breakfasted with Mr. M'Donell. I do not know that Mr. Keveny complained to Mr. M'Donell, nor that the *Bois Brûlés* had said that Mr. Keveny had killed three men. Mr. M'Donell is one of the gentlemen of the North-West Company, and he gave Mr. Keveny a bottle of wine, and a bottle of rum. Instead of sending Keveny with the *Bois Brûlés*, Mr. M'Donell put him in the canoe with me and La Pointe. We did not like to go, because the Metifs had told us he was mischievous or wicked, but we were ordered to go, and the Indian was given us, to serve as a guide for Lake la Pluie. On the way, the second or third day, Keveny was uneasy because the Indian had endeavoured to kill him. The Indian did not speak French, and I do not speak the Indian language. The Indian had made signs that he wanted to kill him, and Keveny was angry at us. The Indian said that Mr. M'Donell would be pleased if he killed him. He said in French, "In killing *Saguenash*, Mr. M'Donell will be pleased." I understood by "*Saguenash*," an "*Englishman*." But I did not then know Keveny's name. I know that Joseph, the Indian, frequently wanted to kill Keveny, while he was under the charge of La Pointe and me. I do not recollect having seen La Pointe and the Indian at Keveny's tent with stakes. I have no

*Mr. Vanfelson.*—Avez-vous jamais raconté à quelqu'un que La Pointe et un autre s'étoient mis en devoir, avec des bâtons, d'aider le sauvage à tuer Keveny ?

*Faye.*—Je ne me rappelle pas de l'avoir dit ; peut-être bien : je ne m'en souviens plus, j'étois bien démonté quelquefois.

*Mr. Vanfelson.*—Avez-vous jamais dit à quelqu'un que La Pointe avoit le cœur assez noir pour tuer Keveny, si vous aviez voulu l'écouter ? (\*\*)

*Faye.*—Non,—Je ne me rappelle pas de l'avoir dit. Dans le cours de notre route nous avons rencontré monsieur Stuart et monsieur Thomson ; monsieur Thomson m'a conseillé de revenir, mais nous n'avons pas fait le retour, et après le sauvage nous a laissé. Avant d'avoir laissé le sauvage, il a eu querelle avec La Pointe, qui l'avoit estropié. La Pointe l'avoit blessé sur le pouce en ferraillant avec son aviron. Le sauvage s'est sauvé dans le bois, et nous l'avons laissé. Il étoit presque nud, mais il avoit des provisions. Il avoit vendu sa couverture auparavant pour un capot. Nous avons gardé son fusil, et il n'avoit pas un canot. Nous avons laissé un peu de tems auparavant Keveny dans une autre isle. Au tems que nous l'avons laissé, monsieur Keveny étoit couché, mais il n'a pas dormi. Il n'avoit pas d'armes. Nous étions campés sur une

knowledge that the Indian, with La Pointe and another, were at the tent, saying at the same time that they would kill Keveny.

(\*\*) *Mr. V. F.*—Did you ever relate to any one that La Pointe and another had provided themselves with stakes to help the Indian kill Keveny.

*H. F.*—I do not recollect having said so ; perhaps I did ; I do not remember it. I was sometimes a good deal beside myself.

*Mr. V. F.*—Did you ever say to any one that La Pointe's heart was black enough to have killed Keveny, if you had listened to him ?

isle plus loin, pour attendre l'arrivée des canots, quand monsieur Archy et d'autres nous ont rencontrés ; c'étoit moi qui leur a crié de venir à terre. Je connois monrs. Cadotte, et il a demandé ce qu'étoit devenu le sauvage, et j'ai répondu que La Pointe l'avoit battu, et qu'il s'étoit sauvé dans les bois. Je ne l'avois touché moi-même, et je ne sais pas que moi et La Pointe ayons disputé quant à qui l'avoit battu, ou que La Pointe ait dit que c'étoit moi qui l'avoit battu, et que c'est pour-ça que monsieur Archy m'ait frappé. On demandoit ce qu'on avoit fait du prisonnier, et j'ai répondu qu'on l'avoit laissé dans une autre isle. Là-dessus monsieur Archy a dit : " il n'étoit pas nécessaire d'avoir battu le sauvage, ni d'avoir laissé le prisonnier," et il nous a battu avec l'aviron, il nous a donné des coups de perche. Monsieur M'Lellan demandoit si je pouvois indiquer l'isle où nous avions laissé Keveny, et j'ai répondu qu'oui ; et ensuite je m'embarquois dans le canot avec monsieur Archy. Nous avons été pour y aller, et après nous avons rencontré d'autres canots, appartenans aux gens de la rivière du Cygne, et d'eux nous avons appris que monsieur Keveny étoit en haut des Dalles ; et ensuite nous avons monté, et l'avons trouvé là,—monsieur Keveny étoit habillé alors bien proprement, comme un monsieur ; et n'avoit pas les hardes qu'on m'a montrées ici aujourd'hui, ni celles qu'il portoit sur lui quand nous l'avions laissé sur l'isle. La dernière fois que j'ai vu monsieur Keveny, il étoit bien arrangé, et habillé comme un monsieur ; comme un bourgeois bien propre. Monsieur Archy a dit qu'il ne pouvoit pas embarquer Keveny avec lui, parceque le canot étoit trop chargé. Son canot étoit alors chargé de quinze personnes, dix hommes et cinq bourgeois, faisant ensemble quinze. Le complément ordinaire pour un semblable canot, étant de dix ; c'est-à-dire, huit pour travailler, et



deux bourgeois. Monsieur Grant étoit là, et Keveny ne paroissoit pas fâché contre lui. Il restoit content, je crois, mais il a parlé en Anglois, et je n'entends pas l'Anglois, mais il ne paroissoit pas être fâché. Quand nous sommes partis, j'ai laissé Keveny avec De Reinhard, Mainville, et José fils de Perdrix Blanche. Ils étoient après gommer le canot, quand nous les avons laissés, mais je ne puis pas dire que Keveny a embarqué avec eux. Je suis bien sûr d'avoir entendu deux coups de fusil ce soir-là : deux hommes, nommés Martin et Lorrain, étoient alors dans le canot avec moi. Nous étions à terre et encampés quand j'ai entendu les deux coups. Il y avoit du monde dans cet endroit-là. L'un a été tiré sur une outarde, et l'autre, je l'ai entendu auparavant que nous eussions encampé, et le monde pouvoit l'entendre aussi que moi. En cet endroit-là on a coutume d'entendre des coups de fusil, et où il y a des sauvages et du monde. Keveny une fois a essayé de renverser le canot, quand nous avons reviré pour aller au Bas de la Rivière, et s'il avoit réussi nous aurions été noyés. J'ai entendu que Mainville a déserté depuis, et j'ai vu Fils de Perdrix Blanche à Montréal ce printemps ; je l'ai vu de loin, et je ne lui ai pas parlé. La Pointe l'a vu aussi, je crois. Les hardes ont été lavées en partie par Joseph et Mainville, mais ce n'étoient pas les hardes, qu'il a portées quand je l'ai laissé, parcequ'il étoit alors habillé comme un monsieur. Il y avoit du sang après, et j'ai vu laver un habit, une veste, une chemise de coton barré de Keveny, mais je n'ai vu aucune partie des hardes dans le canot qu'il portoit quand nous l'avions laissé sur la petite isle, excepté son chapeau. Ces habits-là étoient un habit et une veste bleue de drap, mais ceux dans le canot étoient les vieilles hardes dans lesquelles il voyageoit. Le dernier coup de fusil que j'ai entendu étoit tiré sur une outarde,

comme Mainville m'a dit et il y avoit une outarde qu'ils ont tuée et jettée dans le canot, je le sais bien, parceque je l'ai plumé moi-même. Le lendemain, nous partîmes pour le Lac la Pluie. J'ai vu ensuite De Reinhard prisonnier au fort du Lac la Pluie, où étoient des gens du Milord Selkirk, qui me cherchoient ainsi que La Pointe. Des Meurons et des Canadiens nous ont cherché, mais ils n'avoient pas de fusils, il y en avoit peut-être cinq ou six, et j'ai été fait prisonnier, moi et La Pointe aussi; après que j'ai été pris, le Capitaine d'Orsonnens m'a envoyé au Fort William. Le Capitaine d'Orsonnens paroissoit maître, et c'étoit lui qui nous a envoyés au Fort William. Le Capitaine Matthey, avec un autre, recevoit nos déclarations, et le lendemain matin nous les avons assermentées devant Milord Selkirk; après avoir fait ma déclaration, j'ai été parfaitement libre. Quand j'ai monté en haut, le Fort William étoit en possession de la Société du Nord-Ouest, mais quand j'y fus après y avoir été exoyé par le Capitaine d'Orsonnens, je l'ai trouvé en possession des gens du Milord Selkirk. Je n'ai pas entré au service de Milord, mais on m'a fait travailler sept ou huit jours pour me rendre en hivernement. (69)

(69) No.: I do not recollect saying so. In the course of our route we met Mr. Stuart and Mr. Thomson. Mr. Thomson advised me to return, but we did not, and afterwards the Indian left us. Before having left the Indian he had a quarrel with La Pointe, who had maimed him. La Pointe wounded his thumb in wielding a paddle. The Indian ran away into the woods, and we left him. He was almost naked, but he had provisions. He had sold his blanket before for a capot. We kept his gun, and he had no canoe. We had left Keveny a little while before in another island. At the time we left him Mr. Keveny had laid down, but he was not asleep. He had no arms. We were encamped upon an island farther on, waiting the arrival of canoes, when Mr. Archy and others met with us. It was I who called to them to land. I know Mr. Cadotte well, and he asked me what had become of the Indian, and I answered that

*Solicitor General.*—I must contend that this examination can not be admitted—I do not indeed see to what it is to tend, or how it can operate as a defence.

La Pointe had beat him, and that he had run away into the woods. I had not touched him myself, and I do not know that La Pointe and I quarrelled as to who had beat him, or that La Pointe said it was I who had beat him, and that it was on that account that Mr. Archy had struck me. The question was asked, what had been done with the prisoner, and I answered that he had been left in another island. Thereupon Mr. Archy said, "there was no occasion to beat the Indian, or to have abandoned the prisoner;" and he beat us with the paddle. He struck us with a pole. Mr. M'Lellan enquired if I could point out the island where we had left Keveny, and I answered I could, and afterwards I embarked in the canoe with Mr. Archy. We then went to go there, and afterwards we met other canoes, belonging to the people of Swan River, and from them we learnt that Mr. Keveny was above the Dalles, and then we went up, and found him there. Mr. Keveny was then dressed very neatly, like a gentleman, and he had not the clothes on which have been shewn to me here, nor those which he wore when we left him on the island. The last time I saw Mr. Keveny he was in very good trim, and dressed like a gentleman, like a very well dressed gentleman. Mr. Archy said Keveny could not embark with him, because the canoe was too much loaded. His canoe was then loaded with fifteen. Ten men and five gentlemen, making fifteen in all. The usual complement for such a canoe is ten, that is to say, eight working men and two gentlemen. Mr. Grant was there, and Keveny did not appear to be angry with him. He was satisfied, I believe, but he spoke in English, and I do not understand English. But he did not seem to be vexed. When we went away, I left Keveny with De Reinhard, Mainville, and Joseph, Fils de Perdrix Blanche. The canoe was about being gummed when we left them, but I can not tell whether Keveny embarked with them. I am quite sure that I heard two guns go off that evening. Two men, by name Martin and Lorrain, were at the time in the canoe with me. We were on shore, and encamped, when I heard both the reports. There are people in that neighbourhood. One gun was fired at a bustard, and the other I heard before we had encamped, and the people might hear it as well as me. In that quarter it is usual to hear the reports of guns, and where there are Indians and people. Keveny once tried to overturn the canoe, when we turned back to go to Bas de la Riviere, and if

*Mr. Vanfelson.*—S'il plaît à la Cour, monsieur le Solliciteur Général ne doit pas me dire quelle espèce de défense j'ai à offrir pour cet homme infortuné. Les officiers de la couronne ont leurs devoirs à remplir, et les avocats du prisonnier en ont de même : j'espère que mes savans confrères nous permettront de conduire nous-mêmes la défense.<sup>(70)</sup>

he had succeeded we should have been drowned. I have heard that Mainville has since absconded, and I saw Fils de Perdrix Blanche at Montreal this spring. I saw him at a distance, and I did not speak to him. The clothes were partly washed by Joseph and Mainville, but they were not the clothes which he had on when I left him, for he was then dressed like a gentleman. There was blood upon them, and I saw, washed a coat, a waistcoat, and a striped cotton shirt of Keveny's, but I saw none of the things in the canoe, which he had on when we left him in the little island, excepting his hat. Those clothes were, a blue cloth coat and waistcoat; but those in the canoe, were the old clothes in which he travelled. The last gun which I heard go off, was fired at a bustard, as Mainville told me, and there was a bustard which they had killed and thrown into the canoe. I am sure of it, because I plucked it myself. The next day we took our departure for Lake la Pluie. I afterwards saw De Reinhard a prisoner at the fort of Lake la Pluie. It was the people of Lord Selkirk, who were in search of me and La Pointe. Both De Meurons and Canadians came after us, but they had no muskets. There were perhaps five or six of them, and I was taken prisoner, I and La Pointe also. After I was taken, captain D'Orsonnens sent me to Fort William. Captain D'Orsonnens appeared to be master, and it was he who sent us to Fort William. Captain Matthey and another received our depositions, and the next morning we swore to them before Lord Selkirk. After I had made my deposition, I was perfectly at liberty. When I went up, Fort William was in possession of the North-West Company, but when I came there, after being sent thither by captain D'Orsonnens, I found it in the possession of Lord Selkirk's people. I did not enter into my Lord's service, but I was made to work seven or eight days in order to go a wintering—

<sup>(70)</sup> If it please the Court, I am not to be told by the Solicitor General, what defence to offer for this unfortunate man. The Crown officers have their duties, and so have the counsel for the prisoner, and I hope that my learned brothers will permit us to conduct the defence ourselves.

*Solicitor General*.—Certainly we will; but the gentlemen should recollect, that they would not permit us exactly to pursue our own mode of conducting the prosecution. They made frequent objections, and surely we have the same right if we see occasion.

*Chief Justice Sewell*.—In cross examination a greater latitude is always allowed, and perhaps its fair limits have not at present been passed.

*Mr. Stuart*.—I beg permission to remark, that our objections were not to the mode of examination, nor the manner of extracting evidence, but to the inadmissibility of certain evidence from its illegality, which is essentially different to the objection of my learned friend the Solicitor General.

*Cross examination continued by Mr. Vanselson.*

Je ne suis pas au service du Milord Selkirk, mais j'ai travaillé quelques jours. Je n'ai pas voulu me rendre à Montréal, sans être payé des arrérages dus par la compagnie du Nord-Ouest, et on me les a payés, je les ai reçus en une lettre. J'ai travaillé dans les canots et les bateaux; ils ont promis de me payer le tems que je resterois ici, de me nourrir, et de me faire des récompenses.<sup>(71)</sup>

*Mr. Vanselson, here close his Cross Examination. Constables having been sworn to the safe keeping of the Jury, for whom accommodation had, under the direction of the Court, been prepared at the Union Hotel; the Court was adjourned till Eight o'clock to-morrow morning.*

(71) I am not in the service of my Lord Selkirk, but I worked a few days. I would not go to Montreal without being paid the arrears due to me by the North-West Company, and they were paid me; I received them by a letter. I worked at the canoes and the bateaux. They promised to pay me for the time I should remain here, and to keep me, and to make me a recompense.

*Saturday, 23d May, 1818.*

PRESENT AS YESTERDAY.

*The Jury were called, and being present,*

**JEAN BAPTISTE LA POINTE, Sworn.**

*Examined by the Attorney-General.*

*La Pointe.*—J'étois en 1816, au Lac la Pluie, et au service de la Société du Nord-Ouest. J'ai descendu au Bas de la Rivière, en canot, avec monsieur Cadotte ; il y avoit deux canots en compagnie, et monsieur M'Donell étoit dans l'autre—c'étoit la rivière Winnipic que j'ai descendue. En descendant, nous avons rencontré deux petits canots avec cinq *Bois Brûlés* dedans et monsieur Keveny. Mr. Keveny avoit les fers aux mains.—Mr. M'Donell nous a donné Keveny en charge pour l'amener au Lac la Pluie. Par nous, je veux dire moi, Hubert Faye et José le sauvage, le garçon de *Perdrix Blanche* ; monsieur M'Donell nous a donné Keveny pour le conduire prisonnier au Lac la Pluie. Nous sommes partis avec lui, et nous avons gagné le Lac des Bois, où nous avons rencontré d'autres canots sous la charge de monsr. Thomson et de monsr. Stuart ; monsr. Thomson nous a conseillé de revirer, car il n'y avoit pas de canots qui alloient au Grand Portage ni à Montréal. Nous n'avons pas retourné, mais nous avons continué notre route, car Keveny ne vouloit pas revirer. Après, nous avons rencontré la brigade, guidée par Joseph Paul ; Keveny ne vouloit pas qu'on revirât, demandant à venir à Montréal. La première journée, nous avons suivi la brigade de Paul, mais le lendemain la brigade nous a devancé. Nous avions mis à terre pour attendre la brigade, et à son arrivée nous nous sommes embarqués et nous avons fait chemin

ensemble le premier jour; la brigade avoit des voiles, nous n'en avions pas, et le lendemain la brigade nous a devancé, nous a quitté, et nous les avons perdus de vue. Le soir, nous avons mis à terre sur une Isle et campé pour la nuit; il venoit trop, et le sauvage ne vouloit pas marcher, connoissant le danger. Ce soir-là le sauvage a coupé deux bâtons, et a voulu nous les donner, montrant en même tems avec son fusil qu'il vouloit tuer monsr. Keveny, disant en François, que "Mr. M'Donell dit: c'est bon," montrant avec son fusil qu'il tueroit Keveny. Le lendemain matin, voyant que le sauvage étoit bien fâché et enragé contre nous, parceque nous ne l'avions pas approuvé, et qu'il vouloit nous quitter, nous avons désir de partir. Nous avons laissé Keveny sur l'isle en bas des Dalles; il étoit trop malade. (72)

(72) In 1816, I was at Lake la Pluie, and in the service of the North-West Company. I went down the river in a canoe with Mr. Cadotte. There were two canoes in company, and Mr. M'Donell was in the other. It was the River Winnipic that I went down. In going down we met two small canoes, with five *Bois Brûlés* in them and Mr. Keveny. Mr. Keveny was handcuffed. Mr. M'Donell gave Keveny in charge to us, to conduct him to Lake la Pluie. By us, I mean to say, myself, Hubert Faye, and Joseph, the Indian, the son of Perdrix Blanche. Mr. M'Donell gave Keveny to us to convey him as prisoner to Lake la Pluie. We went away with him, and we got to the Lake of the Woods, where we met other canoes, under the charge of Mr. Thomson and Mr. Stuart. Mr. Thomson advised us to turn back, as there were no canoes going either to the Grand Portage, or to Montreal. We did not return, but we continued our route, for Keveny would not turn back. Afterwards, we met the brigade conducted by Joseph Paul. Keveny would not consent that we should turn back, requiring to go to Montreal. The first day we followed Paul's brigade, but the next day the brigade left us behind. We had put on shore to wait for the brigade, and when it came up, we embarked and kept company together for the first day. The brigade had sails, and we had none, and the following day the brigade outstripped us, left us, and we lost sight of them. In the evening we landed on an island and encamped for the night.

*Mr. Vallière de St. Réal*—Will the Court please to take that “Keveny étoit trop malade.”

*La Pointe*—Faye a été pour réveiller Keveny. Le Sauvage a embarqué en canot, et moi aussi, mais Faye n'étoit pas là dans ce moment, il étoit parti pour réveiller Keveny. Le Sauvage m'a fait comprendre qu'il ne vouloit plus embarquer Keveny. Faye arriva d'abord à la rivière sans amener Keveny; il avoit à la main sa petite chaudière. Il crioit au Sauvage de revenir à terre, et nous avons mis à terre, et Faye s'est embarqué avec nous. Après, laissant Keveny sur l'isle, nous avons descendu, mais le Sauvage ne sachant pas le chemin, nous avons remonté, et le Sauvage nous a amené en haut des Dalles, à un village des Sauvages, disant qu'il s'étoit écarté, et qu'il ne connoissoit pas le chemin. Nous étions bien fâchés et mécontents. Nous y avons resté deux jours. Nous n'avions d'abord qu'un peu de vivres; mais après, on a acheté des vivres. Le Sauvage étoit enragé, et dans sa colère il a cassé le canot. Après cela, il a été obligé d'acheter, avec une couverture de Keveny et sa chaudière, un autre canot, et il nous a fait comprendre d'embarquer, et nous avons continué notre route, ayant reviré à la rivière Winnipic, ayant eu une carte des Sauvages, (birch bark). Le long du chemin,

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It blew too hard, and the Indian would not proceed, being aware of the danger. That evening the Indian cut two stakes, and wanted us to take them, making signs at the same time with his gun that he wished to kill Mr. Keveny, saying in French that “Mr. M'Donell say it is good,” shewing with his gun as if he would kill Keveny. The next morning, perceiving that the Indian was very much vexed and angry with us, because we had not approved of it, and that he wanted to leave us, we were desirous of going away. We left Keveny on an island below the Dalles; he was too ill.



nous avons eu une querelle, et il s'est sauvé dans les bois. Il ne vouloit pas nous laisser manger, ni faire chaudière. Nous étions alors à terre, à l'endroit appelé Portage des Esclaves; nous nous sommes battus ensemble, et le Sauvage nous a quitté et s'est sauvé dans les bois, et nous avons partis de là sans lui. Nous ne connoissons pas le chemin; nous avons remonté la rivière pour trouver l'endroit où nous avions laissé Keveny; mais, craignant de nous écarter, nous avons mis à terre, et débarqué sur une isle, pour attendre l'arrivée des canots. Nous avons resté cinq jours à cette isle, et le cinquième jour nous avons vu un canot montant d'en Bas de la Rivière, et dedans ce canot, il y avoit De Reinhard, Monsr. Archy, Grant, Cadotte, et quelques Bois Brûlés. Mainville étoit là, et Desmarais étoit parmi les Bois Brûlés, le Sauvage José étoit là, et d'autres, mais je ne connois pas les noms de tous. Il y avoit là un nommé Le Vasseur, et un autre le petit Joseph Lorrain. Ils nous ont demandé "ce qu'on fesoit là," et "ce qu'on avoit fait du Sauvage," (ils étoient alors dans leur canot.) Cadotte l'a demandé, et "pour quoi nous avons battu le Sauvage." Je lui ai répondu qu'on avoit eu querelle ensemble, et que le Sauvage avoit voulu tirer sur l'homme, Keveny, qu'ils nous avoit donné en charge. Cadotte a répondu, on vous a dit de ne rien faire au Sauvage, qu'il étoit votre guide. J'ai dit à lui "monsieur Cadotte: vous ne nous avez pas dit de le quitter, ni de tuer Keveny." Cadotte a répondu "cela ne vous regardoit pas, vous êtes des vauriens, des sacrés salôpes, et vous méritez "chacun des coups de bâton; vous n'aviez rien à "faire avec le Sauvage." C'étoit monsieur Cadotte qui a dit cela, et là-dessus monsieur Archy a débarqué à terre, bien enragé, et il a premièrement

battu Hubert Faye. J'ai voulu me sauver, mais il m'a attrappé et m'a battu.<sup>(73)</sup>

(73) Faye went to wake Keveny. The Indian embarked in the canoe, and I did too. Faye was not there at that moment; he had gone to wake Keveny. The Indian gave me to understand that he would not take Keveny on board again. Faye soon came to the river without bringing Keveny with him; he had his little kettle in his hand. He called to the Indian to return to the shore, and we went back, and Faye embarked with us. After leaving Keveny on the island, we proceeded down, but the Indian, not knowing the way, we ascended again, and the Indian brought us, above the Dalles, to an Indian village, saying that he had lost his way and did not know the route. We were very angry and dissatisfied. We had but a very small quantity of provisions: and afterwards provisions were purchased. The Indian was angry, and in his rage he broke the canoe. After that he was forced to buy another canoe with a blanket of Keveny's and his kettle, and he gave us to understand that we were to embark, and we continued our route, having turned back for the River Winnipic, having got a birch bark map from the Indians. On the way, we had a quarrel, and he ran away into the woods. He would not let us take our meals nor boil our kettle. We were then on shore, at the place called Portage des Esclaves, (Slave Portage). We fought together, and the Indian left us, and ran away into the woods, and we left that place without him. We did not know the way; we went up the river to find the place where we had left Keveny, but, fearing to lose ourselves, we made for the shore, and landed on an island, to wait the arrival of canoes. We remained five days in that island, and on the fifth day we saw a canoe coming up from Bas de la Rivière; and in that canoe were De Reinhard, Mr. Archy, Grant, Cadotte, and some *Bois Brûlés*. Mainville was there, and Desmarais was amongst the *Bois Brûlés*. The Indian, Joseph, was there, and others, but I do not know the names of all. There was one named Le Vasseur, and another little Joseph Lorrain. They asked us, "what we were doing there?" and "what we had done with the Indian," (they were then in their canoe.) It was Cadotte who asked this, and "why we had beaten the Indian." I answered him that we had had a quarrel, and that the Indian wanted to shoot the man, Keveny, whom they had given in charge to us. Cadotte replied, you were told to do nothing to the Indian, and that he was our guide. I said to him, "Mr. Cadotte you did not tell us to leave him, nor to kill Keveny." Cadotte then answered "that was not your concern, you are rascals, and blasted blackguards, and you both deserve a

*Mr. Vallière de St. Réal.*—I do not perceive that this can be any evidence against the prisoner, nor do I conceive that it is at all regular to enter upon an investigation of circumstances, which, altho' not direct evidence against the prisoner, may have a tendency to impress the minds of the jury unfavourably.

*Attorney-General.*—I shall immediately connect the prisoner with all these transactions, my very next question associates him with the whole.

*La Pointe.*—De Reinhard étoit plus proche de monsieur Cadotte que moi. Monsieur Archy a débarqué, c'est bien certain; et après, nous avons embarqué pour chercher Keveny. Le canot s'étoit arrêté à terre au bord de l'eau, et Faye a embarqué avec moi. Monsieur Archy nous a demandé "Où est-ce que nous avons quitté Keveny," et nous avons répondu, que nous avons essayé de retrouver l'endroit, mais qu'on ne le savoit pas au sûr. Il a répondu, nous avons le Sauvage, et il sait bien où le trouver (Keveny). Grant a dit, "vous voulez le cacher, essayez à le défendre à cette heure, vous serez bien reçus, vous mangerez ce qu'il y a dans mon fusil." Nous avons poursuivi notre route, et le lendemain nous nous sommes rendus à l'endroit où nous avions quitté Keveny. La même journée que nous avons embarqué, les Bois Brulés, le long de la route, ont parlé de tuer Keveny entr'eux, de cette manière: Le Vasseur a dit "c'est moi, et si je le tue j'aurai ses bottes," Mainville a dit "j'aurai son chapeau," (comme de fait il l'a eu). Avant d'arriver à l'isle, j'ai entendu De Reinhard

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"threshing; you have nothing to do with the Indian." It was Mr. Cadotte who said this, and thereupon Mr. Archy landed, quite in a rage, and he first beat Hubert Faye; I tried to get away, but he caught me, and beat me too.

dire "j'en aurai bien soin ; c'est moi qui le tuera."

*Attorney-General.*—Où étoit De Reinhard alors ?

*La Pointe.*—Dans le canot.

*Mr. Justice Bowen.*—Dans quel faix du canot ?

*La Pointe.*—Il étoit assis au milieu du canot, avec les bourgeois, monsieur Archy, monsieur Grant, et Cadotte ; et en arrivant à la petite isle, tout le monde a débarqué, mais Keveny n'y étoit plus. J'ai entendu moi-même De Reinhard dire, "c'est moi qui le tuera, et qu'il n'auroit pas bien soin," et les autres dire, l'un "qu'il aura son chapeau," et l'autre "qu'il aura ses bottes." En débarquant, ils étoient tous armés, et De Reinhard avoit un poignard ; ce n'étoit pas un sabre, ni une bayonnette, pour le sûr. C'étoit un poignard, aussi long que dix-huit pouces. On a trouvé Keveny en haut des Dalles avec les Sauvages. Nous avons appris des gens des canots de la Rivière Cygne, que nous avons rencontrés en bas des Dalles, sous la conduite du guide Ducharme, qu'on le trouveroit là, et nous nous y sommes rendus. Il a été demandé par quelqu'un, mais je ne puis pas dire par qui, "comment fait-il pour vivre," et ils ont répondu, (c'est-à-dire les gens de la Rivière Cygne,) "quelquefois il vole, et quelquefois il achète," et les Métifs de notre canot ont répondu, "Il ne volera pas de long-tems." C'étoient les Métifs qui le disoient, mais je ne sais pas si De Reinhard étoit assez proche pour l'entendre. Cette conversation avoit lieu à terre. Vu que je n'avois pas une montre, je ne puis pas dire à quelle heure nous avons débarqué, mais nous avons resté près de deux heures à terre. En arrivant à terre, on ne parloit plus de tuer Keveny. Quand nous l'avons retrouvé, monsieur Grant a donné la main à Keveny, et ils ont parlé ensemble.

*Chief Justice Sewell.*—Monsieur Keveny et les bourgeois ont ils dîné ensemble ?

*La Pointe.*—Non, ils ne mangeoient pas.—(")

*Examination continued by the Attorney-General.*

*La Pointe.*—On nous a envoyé chercher le butin de Kevény; ils l'ont embarqué dans le grand canot de monsieur Archy, non pas tout, mais une

(") *L. P.*—De Reinhard was nearer to Mr. Cadotte than I was. Mr. Archy did land; that is quite certain; and afterwards we embarked to go in search of Kevény. The canoe was aground at the water's edge, and Faye embarked with me. Mr. Archy asked us, "where it was that we had left Kevény," and we answered that we had been endeavouring to find the place again, but that we were not sure where it was. He replied "We have got the Indian, and he knows where to find him; (Kevény)." Grant said "you want to conceal him, try to forbid him now, you will be well received, you shall swallow the contents of my gun." We pursued our route, and the next day we came to the place where we had left Kevény. The same day that we embarked, the Bois Brûlés, on the way, talked amongst themselves of killing Kevény in this manner: Le Vasseur said, "it is me, and if I kill him, I will have his boots;" Mainville said, "I will have his hat," (as in fact he had). Before coming to the island I heard De Reinhard say "I will take good care of him; it is I who will kill him."

*A. G.*—Where was De Reinhard then?

*L. P.*—In the canoe.

*Mr. J. B.*—In what part of the canoe?

*L. P.*—He was sitting in the middle of the canoe with the gentlemen, Mr. Archy, Mr. Grant, and Cadotte; and, on arriving at the small island, every body landed, but Kevény was no more there. I heard De Reinhard say myself, "it is I who will kill him, and that he would not have good care," and the others said, one, that he would have his hat, and the other, that he would have his boots. When they landed, they were all armed, and De Reinhard had a dagger; it was neither a sword, nor a bayonet, for certain. It was a dagger, as long as eighteen inches. Kevény was found above the Dalles with the Indians. We learnt from the people of the Swan River canoes, whom we had met below the Dalles, under the conduct of Ducharme, the guide, that he would be found there, and we consequently repaired thither. Somebody asked, but I can not tell who, "how does he do to live," and they answered, (that is to say the Swan River people,) "Some times he steals, and some times he purchases," and the *Métis* of our canoe replied, "He

bonne partie. Nous avons resté deux heures à terre, et j'ai, et tous les autres aussi, embarqué avec monsieur Archy, (excepté Keveny, De Reinhard, Mainville, et le Sauvage José), et nous sommes partis, laissant les trois avec Keveny.

*Chief Justice Sewell.*—Pourquoi avez-vous laissé ces hommes ?

*La Pointe.*—Ils ont resté pour suivre dans un petit canot, que les sauvagesses étoient après gommer. Elles avoient fini alors, à ce que je crois.<sup>(12)</sup>

*Examination continued by the Attorney-General.*

*La Pointe.*—Nous avons continué en devant, et perdu les autres de vue. Nous avons été ensuite trois lieues ou environ, et nous avons débarqué, et campé pour la nuit. Avant d'arriver, et pendant que nous étions sur l'eau, nous avons entendu un coup de fusil. Nous avons marché peut-être la moitié du chemin, et un des Bois Brûlés

shall not steal long." It was the *Metifs* who said it, but I do not know whether De Reinhard was near enough to hear it. This conversation was on shore. Seeing that I had no watch, I can not say at what o'clock we disembarked, but we continued on shore almost two hours. When we landed, nothing more was said about killing Keveny. When we found him again, Mr. Grant shook hands with Keveny and they conversed together.

*C. J. S.*—Did Mr. Keveny and the gentlemen dine together ?

*L. P.*—No, they did not eat together.

<sup>(12)</sup> *L. P.*—We were sent to fetch Keveny's baggage ; they put it on board of Mr. Archy's large canoe ; not all of it, but a good part. We remained two hours on shore ; and I, and all the others, excepting Keveny, De Reinhard, Mainville, and Joseph the Indian, embarked with Mr. Archy, and we went away, leaving the three with Keveny.

*C. J. S.*—Why did you leave these men.

*L. P.*—They stopped behind to follow in a small canoe, which the Indian women were about gumming. They had then finished it, as far as I believe.

dans le canot dit alors, "avez-vous entendu cela ?  
"Un coup de fusil ?" et, "l'homme est tué." Ils  
l'ont entendu ; ils disoient qu'ils l'avoient enten-  
du.<sup>(16)</sup>

*Chief Justice Sewell.*—L'avez-vous entendu, ou  
les autres ?

*La Pointe.*—Oui ; après que nous sommes dé-  
barqués, mais moi je n'ai pas entendu le premier  
coup tiré. Quand nous étions débarqués à terre,  
j'ai entendu un coup de fusil. Je n'avois pas en-  
tendu le premier coup quand le canot étoit sur  
l'eau, mais les autres l'ont entendu, et quand j'ai  
dit auparavant que nous avions entendu un coup  
de fusil sur l'eau, je n'ai jamais voulu dire que je  
l'ai entendu moi-même, mais que les gens dans le  
canot disoient l'avoir entendu. Je n'entendis qu'un  
seul coup. Mainville en a entendu deux. Quand  
Mainville étoit pour arriver à terre, des outardes  
se sont adonnées à passer, et Mainville a lâché un  
coup de fusil et en a tué une. Quand j'ai enten-  
du le premier coup, le canot de Mainville n'étoit  
pas encore en vue—j'ai été alors à terre, peut-être  
une heure avant que j'aie vu le canot. Mainville  
a tiré sur une outarde, et l'a tuée, et j'ai entendu  
le coup, et j'ai vu le canot au tems du deuxième  
coup. Il y avoit peut-être une heure d'intervalle,  
plus ou moins, entre les deux coups que j'ai enten-  
dus. C'étoit Mainville qui tua l'outarde, et je l'ai  
vu. Au moment que le canot arriva, quelqu'un à  
terre a demandé, "ce qu'ils avoient fait de Keveny ?"

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(16) We continued to go on before, and lost sight of the oth-  
ers. We proceeded afterwards for three leagues or thereabouts,  
and we disembarked, and encamped for the night. Before ar-  
riving there, and while we were on the water, we heard the  
report of a gun. We had proceeded perhaps about half way,  
and one of the *Bois Brûlés* in the canoe then said, "did you  
"hear that ? the report of a gun ?" and, "the man is killed."  
They heard it, and they said that they had heard it.

et De Reinhard qui étoit alors dedans le canot a répondu ; " il est bien caché, il ne reviendra plus." Dans le tems que je parlois avec Mainville, Reinhard a débarqué, et tout le monde étoit d'un tas en bande, et Reinhard parmi. Un des *Bois Brûlés* a demandé à Mainville si monsieur Keveny avoit fait beaucoup de résistance quand on l'a tué. On étoit alors autour d'un feu, et Mainville a dit que " monsieur Keveny disoit qu'il étoit malade, et demandoit d'être mis à terre." De Reinhard étoit alors plus proche de Mainville que moi ; la distance étoit, plus ou moins, de neuf ou dix pieds. Je ne puis pas dire exactement la distance, peut-être il étoit aussi proche que vous l'êtes de moi, ou de la boîte des témoins jusqu' au banc des juges. De Reinhard étoit assurément plus proche de Mainville que je ne l'étois moi. Mainville a répondu à la question des *Bois Brûlés*, que monsieur Keveny disoit qu'il étoit malade, et demandoit à aller à terre ; et qu'on l'avoit mis à terre, et qu'en s'embarquant, De Reinhard l'avoit dardé dans le dos avec un poignard ou sabre ; que Keveny étoit écrasé et s'est doublé par le coup, et que De Reinhard voulant lui donner un second coup de sabre, monsieur Keveny, en se levant, se saisit du poignard ou sabre de De Reinhard avec sa main, et que De Reinhard là-dessus a crié à Mainville de tirer, et qu'alors Mainville a lâché son fusil, et a posé la balle au travers de son cou, et que Keveny a tombé par-dessus le canot, et Mainville ajouta que s'il n'avoit pas été vif à tirer, que Keveny auroit eu encore la force d'oter de Reinhard son sabre ou poignard.

*Chief Justice Sewell.*—Que disoit De Reinhard, quand Mainville a raconté ceci ?

*La Pointe.*—Il n'a rien dit.<sup>(77)</sup>

<sup>(77)</sup> C. J. S.—Did you hear it, or the others ?

L. P.—Yea : after we had landed ; but as for me, I did not



*Mr. Vallière de St. Réal.*—I beg the Court that the witness's answer may be taken down.

*La Pointe.*—Il parloit avec les autres, mais je ne sais pas ce qu'il a dit.

*Mr. Vallière de St. Réal.*—I beg that may be taken down also.

*Chief Justice Sewell.*—Mainville parle-t-il haut d'ordinaire?

hear the first gun fired. When we had landed, I heard the report of a gun. I did not hear the first report, when the canoe was on the water, but the others heard it, and when I said before that we had heard the report of a gun upon the water, I never meant to say that I had heard it myself, but that the people in the canoe said that they had heard it. I heard but one report. Mainville heard two. When Mainville was about coming on shore, some bustards flew past, and Mainville fired his gun and killed one of them. When I heard the first report, Mainville's canoe was not then in sight. I was then on shore; perhaps I had been an hour on shore before I saw the canoe. Mainville shot at a bustard, and killed it, and I heard the report, and I saw the canoe at the time of the second report. It was perhaps an hour, more or less, between the two reports which I heard. It was Mainville who killed the bustard, and I saw it. Just as the canoe arrived, some one shore asked "what they had done with Keveny?" and De Reinhard, who was then in the canoe, answered, "he is well hidden, he won't come back again." While I was conversing with Mainville, Reinhard landed, and the whole party were mixed together, and Reinhard was amongst them. One of the Bois Brûlés asked Mainville whether Mr. Keveny had made a great deal of resistance when he was killed. The party were then round a fire, and Mainville said that "Mr. Keveny said he was ill and desired to go on shore." De Reinhard was then nearer to Mainville than I was; the distance was nine or ten feet, more or less. I can not tell the distance exactly, perhaps he was as near as you are to me, or from the witness's box to the judge's bench. De Reinhard was certainly nearer to Mainville than I was myself. Mainville replied to the question of the Bois Brûlés, that Mr. Keveny said he was ill, and desired to go on shore; and that he had been put on shore, and that on reembarking De Reinhard had stabbed him in the back with a dagger or sword, that Keveny was crushed and doubled himself down under the stroke, and that De Reinhard attempting to give him a second cut with the sword, Mr. Keveny in rising, seized hold of De

*La Pointe.*—Oui ; il parloit haut d'ordinaire, il parloit assez haut pour moi l'entendre bien, et je l'ai bien entendu. <sup>(72)</sup>

*Examination continued by the Attorney-General.*

*La Pointe.*—J'ai vu le sabre de Reinhard peu après, mais je n'ai pas fait attention s'il étoit ensanglanté ou non, et j'ai vu le butin de Keveny, et monsieur De Reinhard a commencé de séparer le butin et les hardes. J'ai vu le butin dans le canot, plein de sang. Mainville et le sauvage ont débarqué le butin tout de suite, le même soir. C'étoit plein de sang, et je les ai vu laver le même soir par eux. Il y avoit beaucoup de sang dans le canot au fonds, et assurément plus que le sang d'une outarde ou de dix outardes. Dix outardes n'auroient pas fait ce sang-là. Je ne crois pas que l'outarde étoit dans le canot ; point du tout. Je l'ai vue tomber dans l'eau, à la distance de quinze ou trente pieds, et je crois qu'on l'a attrappée à l'eau, et jetée à terre sans la mettre dans le canot. De Reinhard a séparé le butin de Keveny, et je l'ai vu. Quand il a commencé, il a dit, " comme c'est moi qui l'a tué, j'aurai le premier choix sur le butin, et

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Reinhard's dagger or sword with his hand, and that thereupon De Reinhard called to Mainville to kill him, and that Mainville then fired his gun, and sent the ball through his neck, and that Keveny fell upon the canoe, and Mainville added, that if he had not been quick in firing, Keveny would still have had strength enough to wrest the dagger or sword from Reinhard.

*C. J. S.*—What did De Reinhard say when Mainville related this ?

*L. P.*—He said nothing.

<sup>(73)</sup> *L. P.*—He conversed with the others, but I do not know what he said.

*C. J. S.*—Does Mainville generally speak loud ?

*L. P.*—Yes ; he generally spoke loud. He spoke loud enough for me to hear very well, and I did hear him very well.

comme Mainville étoit avec moi et qu'il aida à le tuer, il aura plus que les autres." Il y avoit deux petites boîtes de papiers—l'une étoit une cassette ronde couverte en peau, et une petite chose ou une boîte pour écrire.<sup>(79)</sup> [*Witness here explained that, "la boîte pour écrire" was similar to a portable writing-desk, which Mr. Justice Bowen had before him.*] J'ai vu de l'argent dedans la boîte à écrire et c'étoit Mainville qui avoit l'argent. Après que De Reinhard avoit ouvert les cassettes, il commença lui-même à séparer le butin. Il mettoit le meilleur dans une boîte pour lui-même, mais quand les Bois Brûlés ont vu que De Reinhard vouloit s'emparer du meilleur du butin, des chemises fines et ainsi du reste, ils n'ont pas voulu en prendre, excepté Mainville qui a eu des hardes. De Reinhard a dit, "je vous donnerai des chemises de coton quand nous serons rendus à la Rivière Rouge;" et cela les fâchoit. Le lendemain, De Reinhard a dit qu'il faut quitter le butin ici, et on le reprendra quand on sera pour retourner à la Rivière Rouge.

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(79) L. P.—I saw Reinhard's sword afterwards, but I did not observe whether it was bloody or not, and I saw Keveny's things, and Mr. De Reinhard began to divide them, the baggage and the clothes. I saw the things in the canoe all bloody. Mainville and the Indian brought the things on shore immediately, the same evening. They were full of blood, and I saw them washed the same evening by them. There was a great deal of blood in the canoe, at the bottom, and certainly more than the blood of a bustard, or of ten bustards. Ten bustards would not have given so much blood. I do not believe that the bustard was ever in the canoe. I saw it fall in the water at the distance of fifteen or thirty feet, and I believe it was taken from the water and thrown on shore, without having been put in the canoe at all. De Reinhard divided Keveny's things, and I saw it. When he began, he said, "as it was I who killed him, I will have the first choice of his things, and as Mainville was with me, and assisted me in killing him, he shall have more than the others." There were two small boxes of papers, one was a round box covered with skin, and a small thing, or writing-box.

J'ai vu cacher le butin par une bande de Bois Brûlés, les mêmes des canots avec nous autres. Je ne sais pas si De Reinhard étoit avec eux alors ou non, mais j'ai connoissance que De Reinhard a donné les ordres pour les cacher. J'ai reçu les ordres "de ne pas parler."

*Mr. Justice Bowen.*—Qui est-ce qui vous a donné ces ordres ?

*La Pointe.*—C'étoit monsieur De Reinhard ; il m'a dit, "de ne pas en parler," et j'ai demandé de quoi, et De Reinhard a répondu, "du meurtre de monsieur Keyeny."—Il a dit aussi, que "si on en parloit, ce ne seroit pas lui, mais nous autres, qui en seroient punis."

*Chief Justice Sewell.*—Etes vous sûr, bien sûr, que c'est De Reinhard qui vous a dit ces mots ; et non pas Mainville, ou quelqu'autre personne ?

*La Pointe.*—Je suis bien sûr que c'étoit De Reinhard qui l'avoit dit, et Mainville a dit, que "si je parlois de ce meurtre, je serois pendu," et je suis bien sûr de cela.<sup>(\*)</sup>

*The coat was here produced.*

*Attorney-General.*—Avez-vous vu cet habit auparavant ?

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(\*) I saw some money in the writing-box, and it was Mainville who had the money. After De Reinhard had opened the boxes he began himself to divide the things. He put the best in a box for himself, but when the *Bois Brûlés* saw that De Reinhard wanted to take possession of the best things, the fine shirts, and so on, they would not take any thing, excepting Mainville, who had some of the clothes. De Reinhard said "I will give you cotton-shirts when we get to Red River," and that vexed them. The next day De Reinhard said, the things must be left here, and they can be got again on the return to Red River. I saw the things concealed (caché) by a party of *Bois Brûlés*, those belonging to the same canoes as we. I do not know whether De Reinhard was with them then or not. But I know that De Reinhard gave orders to conceal them. I received orders, "not to talk of this."

*Mr. J. B.*—Who was it gave you those orders ?

*La Pointe.*—Oui; j'ai vu un habit comme celui-ci, mais plus neuf et plus long, un peu plus long, de même couleur et qualité de drap, sûrement; mais plus neuf et certainement un peu plus long. Je l'ai reçu en échange de Mainville pour un capot. Je l'ai eu parceque je devois hiverner au Lac la Pluie, et que je n'avois qu'une chemise. Toutes mes hardes avoient été laissées au Bas de la Rivière, dans le canot de monsieur Cadotte, au tems que monsieur Keveny me fût donné en charge.

*Chief Justice Sewell.*—Avez-vous donné cet habit à aucune personne?

*La Pointe.*—Oui, je l'ai cédé à Hubert Faye.<sup>(1)</sup>

*Examination continued by the Attorney-General.*

*La Pointe.*—Au Lac la Pluie, je n'avois pas du butin, ou des hardes, point du tout; je n'avois rien qu'une chemise, j'étois presque nud.—Quand De Reinhard, Mainville et José sont arrivés, il y

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*L. P.*—It was Mr. De Reinhard; he told me "not to speak about it," and I asked about what, and De Reinhard answered, "of the murder of Mr. Keveny." And said likewise that, "if it were talked of, it would not be him, but we the others, who would be punished for it."

*C. J. S.*—Are you sure, quite sure, that it was De Reinhard who said those words, and not Mainville, nor any other person?

*L. P.*—I am quite sure that it was De Reinhard who said it, and Mainville said that "if I spoke of this murder I should be hung," and I am quite sure of that.

<sup>(1)</sup> *A. G.*—Have you seen this coat before?

*L. P.*—Yes: I have seen a coat like that, but newer, and longer, a little longer, of the same colour, and of the same kind of cloth certainly, but newer, and certainly a little longer. I received it in exchange from Mainville for a capot. I took it because I was going to winter at Lake la Pluie, and I had nothing but a shirt. All my clothes had been left at Bas de la Rivière in Mr. Cadotte's canoe, at the time that Mr. Keveny was given to me in charge.

*C. J. S.*—Did you give that coat to any other person?

*L. P.*—Yes; I parted with it to Hubert Faye.

avoit dans le canot un habit ensanglanté et percé, un habit de cette couleur. J'ai vu dans le canot un habit ensanglanté, que j'avois vu auparavant sur Keveny, dans le tems qu'il étoit sous notre charge. Je l'ai bien reconnu, et j'ai vu des trous dedans; mais je ne l'ai pas pris dans mes mains pour l'examiner.<sup>(\*)</sup>

*Mr. Vallière de St. Réal.*—I beg the Court to take that part of the witness's answer, that he did not examine the coat.

*La Pointe.*—Les trous étoient dans le collet et le dos, un grand et un autre plus petit. Je puis assurément prendre mon serment que l'habit que j'ai vu dans le canot étoit l'habit de monsieur Keveny. Je n'avois pas pris l'habit dans ma main, mais je l'ai vu percé avec une balle.<sup>(\*)</sup>

*Cross examination conducted by Mr. Vallière de St. Réal.*

*La Pointe.*—C'étoit en bas des Dalles que monsieur M'Donell s'est rencontré avec Keveny. Il ne paroissoit pas avoir de haine contre lui, mais au contraire, il lui a fait ôter ses fers. Monsieur M'Donell est de la société du Nord-Ouest; un bourgeois, à ce que j'ai entendu dire. Ils ont mangé ensemble, et il lui a donné deux bouteilles

(\*) At Lake la Pluie I had no things, nor any clothes, none at all. I had nothing but one shirt, I was almost naked. When De Reinhard, Mainville and Joseph arrived, there was a coat in the canoe that was bloody, and pierced through; a coat of this colour. I saw a bloody coat in the canoe, which I had before seen upon Keveny at the period he was under our charge. I recollect it very well, and I saw there were holes in it, but I did not take it in my hands to examine it.

(\*) The holes were in the neck, and in the back; one large one, and one smaller one. I can certainly take my oath that the coat I saw in the canoe was Mr. Keveny's coat. I did not take the coat in my hands, but I saw it was pierced by a ball.

de boisson, et de petits biscuits. Monsieur Keveny parloit Anglois, et je ne l'ai jamais entendu parler François. José, Fils de Perdrix Blanche, ne parloit pas François; il parle un peu de mots; il débitoit quelques paroles, mais je ne sais pas s'il les comprenoit lui-même. Je ne parle pas Sauvage, et le Sauvage parle, mais très peu de mots en François, cependant par les signes qu'il nous faisoit avec, on le comprenoit. Faye a eu querelle une fois avec Keveny. Keveny vouloit le battre. C'étoit au Portage des Rats, ou au Portage des Bois, et au tems que nous avons rencontré monsieur Thomson, qui nous a conseillé de revirer. Monsieur Keveny ne vouloit pas qu'on revirât, et il a essayé de renverser le canot. J'avois peur qu'il voulût le renverser. Je n'ai pas de connoissance que Faye s'est jamais mis en devoir d'assister José, avec un bâton ni autrement, pour tuer Keveny, ni qu'un autre homme s'est jamais mis à couper un bâton, pour aller avec à la porte de la tente de Keveny avec le Sauvage pour le tuer, si José le manquoit. Nous n'avons pas laissé d'armes à Keveny, nous n'en avons pas nous-mêmes, excepté José qui avoit un fusil. Il avoit pas de feu. C'étoit une isle où nous l'avons laissé, et il n'avoit pas de canot, ni d'autre moyen de sortir de cette isle qu'en nageant, (la terre n'étoit pas loin,) ou en faisant un petit cajeux, ou d'attendre qu'un canot le prît en passant. La raison que nous avons quitté Keveny dans l'isle, étoit parceque nous n'avions point de vivres qu'une chaudiere ou deux, et c'étoit pour aller querir des vivres de la brigade, et parceque le Sauvage ne connoissoit pas le chemin, et ne vouloit pas l'embarquer. Keveny n'avoit pas de hache ni aucune chose pour couper du bois. Je ne savois pas dans le tems s'il avoit les moyens de faire du feu ou non. Lorsque le Sauvage José nous a lais-

sé, c'est-à-dire, après que nous avons quitté Keveny, il y avoit long-tems qu'il me maltraitoit; il me donnoit des coups d'aviron. Il se tenoit à la barre du canot, et mangeoit en même tems que nous nagions, et nous ne pouvions pas manger; et le lendemain, c'étoit au Portage des Esclaves, il ne vouloit pas nous laisser manger, il ne vouloit pas nous donner à déjeuner. Nous avons débarqué notre butin, et il a pris son fusil et a visé sur moi, mais Faye le lui a arraché. Le fusil n'avoit pas de pierre. Je suis bien convaincu que le fusil n'avoit pas de pierre. Il nous a quitté là, et je ne l'ai vu qu'après que j'ai été battu par monsieur Archy, quand il avoit une redingote Ecossoise sur lui. Dans ce tems-là, il étoit blessé à la main. Les réponses que j'ai données aux gens du canot de monsieur Archy, avoient été données avant que monsieur Archy m'eût battu, et avant que de savoir que José étoit dans le canot. J'ai dit que je me suis sauvé du Sauvage après que je me suis battu avec lui. Je ne puis pas me rappeler exactement tout ce que a été dit; j'avois alors bien peur, et j'étois bien démonté; mais je n'étois pas fou, quoique j'aie dit tout-à-l'heure que j'étois moitié fou lors que nous étions sur l'isle. Je connois Joseph Lorrain, un Bois Brûlé, il étoit là. Le Vasseur aussi, et Martin, je pense. Mainville, monsieur Cadotte, monsieur Grant, De Reinhard, et M'Lellan, étoient aussi dans le canot. Desmarais et le Sauvage Joseph, aussi; nous étions, à ce que je crois, quinze personnes dans le canot, au tems que nous avons sorti de l'isle. Je ne me suis pas défendu avec Faye, au moment que j'ai vu le Sauvage, disant que c'étoit lui et non pas moi qui l'avoit battu; Faye a dit que c'étoit moi, et c'étoit vrai. Je n'avois pas accusé Faye de l'avoir battu. Monsieur Archy, quand il m'a fessé, n'a pas dit alors pour quoi il me frappoit;



mais le même jour, en canot, il m'a dit que c'étoit pour le faire voir au Sauvage ; et je lui ai dit qu'il n'auroit pas du fesser si fort. Dans le canot on changeoit des fois les places aux bancs. Le jour que j'ai embarqué avec monsieur Archy, quelque fois il y avoit un homme, et quelquefois deux, entre moi et les bourgeois. Je ne me souviens pas si j'étois à coté du gouvernail, ou voisin du gouvernail. Lorrain nageoit en arrière des bourgeois, et il n'y avoit de bourgeois à bord que monsieur Archy, monsieur Grant, Cadotte, et De Reinhard, et ils ne nageoient pas. Le Sauvage, José ne nageoit pas, cependant il n'est pas bourgeois. Je ne sais pas pour le certain que tout le monde dans le canot m'ait entendu, quand j'ai raconté que le Sauvage José vouloit tuer Keveny. Je ne sais pas si je pouvois être entendu de toutes les personnes, ou non. Je crois que le canot marchoit alors ; mais s'il avoit arrêté, ils auroient entendu. Le même soir, je crois, j'ai raconté aux bourgeois et aux autres, l'affaire entre le Sauvage et Keveny, quand il vouloit tuer Keveny. Je n'ai jamais dit, ni je n'ai pas entendu dire par Fayé, que lui et un autre s'étoient rendus, avec le Sauvage José, à la porte de la tente de Keveny, avec des bâtons pour l'achever, ni pour le tuer, si le Sauvage le manquoit ; mais j'ai dit que le Sauvage avoit coupé des bâtons, et qu'il étoit venu nous les porter, nous montrant avec son fusil, et par ses gestes nous faisant comprendre, que s'il manquoit son coup, nous devrions le fesser avec les bâtons.<sup>(14)</sup>

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(14) It was below the Dalles that Mr. M'Donell met with Keveny. He did not appear to have any animosity against him, but on the contrary, he caused his irons to be taken off. Mr. M'Donell belongs to the North-West Company; he is a partner, as I have understood. They eat together, and he gave him two bottles of liquor, and some small biscuits. Mr.

*The witness here exhibited the gestures, &c. of the Indian, with his hands.*

Je ne me rappelle pas d'avoir dit, ni d'avoir entendu dire par Faye, que la raison pour la quelle

Keveny spoke English, and I never heard him say any thing in French. Joseph, Fils de Perdrix Blanche, did not speak French; he spoke a few words, he could utter a few words, but I do not know whether he even understood them himself. I do not speak the Indian language, and the Indian could speak but a very few French words, yet the signs he made at the same time made him to be understood. Faye once quarrelled with Keveny. Keveny wanted to strike him. It was at the Portage des Rats, or at the Portage des Bois, and about the time we had met Mr. Thomson, who advised us to turn back. Mr. Keveny did not choose we should turn back, and he endeavoured to upset the canoe. I was afraid that he would have upset it. I have no knowledge that Faye ever was about assisting Joseph with a stake, or in any other way, to kill Keveny, nor that any other man ever set about cutting a stake, and went with it to the door of Keveny's tent with the Indian, in order to kill him, if Joseph missed him. We left no arms with Keveny, we had none ourselves, excepting Joseph, who had a gun. He had no fire. It was upon an island that we left him, and he had no canoe, nor any other means of leaving the island, but by swimming, (the mainland was not far off), or by making a small raft, or by waiting for a canoe going by to take him off. The reason why we left Keveny on the island, was because we had no more provisions than a kettle, (*chaudiere*) or two, and also that we might go and get some provisions from the brigade, and because the Indian did not know the way, and would not take him on board. Keveny had no axe nor any thing to cut wood with. I did not know at the time, whether he had materials for striking fire or not. When the Indian, Joseph, went away from us, that is, after we had left Keveny, he had been for a long while in the habit of maltreating me; he struck me with the paddles. He kept possession of the bar of the canoe; and was eating while we were paddling and could not eat, and the next day, being at Portage des Esclaves, he would not let us take our meals, he would not give us any thing for breakfast. We landed our things, and he took his gun and pointed it at me, but Faye snatched it from him. The gun had no flint, I am quite convinced that the gun had no flint. He left us there, and I did not see him again, till after I was beaten by Mr. Archy, when he had a Scotch cloak about him. At that time his hand was wounded. The answers which I gave to the people of Mr. Ar-

Keveny n'avoit pas été tué, étoit parceque le Sauvage n'avoit rien fait, et que l'affaire en restoit là. Faye n'a pas dit, à ma connoissance, et assurément pas devant moi, "si nous n'avions crié La Pointe, Keveny auroit été tué ; La Pointe auroit

chy's canoe, were given before Mr. Archy beat me, and before I was aware that Joseph was in the canoe. I said that I had fled from the Indian after I had fought with him. I can not recollect exactly all that was said : I was then very much frightened, and scarcely knew what I was about, but I was not mad, although I said just now that I was half mad when we were upon the island. I know Joseph Lorrain, a *Bois Brûlé*, he was there. Le Vasseur, and I think also Martin. Mainville, Mr. Cadotte, Mr. Grant, also De Reinhard and M'Lellan were in the canoe. Desmarais and the Indian, Joseph, too. We were, I believe, fifteen in number in the canoe, when we left the island. I did not dispute with Faye when I saw the Indian, saying that it was him, and not me, that had beaten him ; Faye said that it was me, and that was true. I did not accuse Faye of having beaten him. Mr. Archy, when he flogged me, did not say why he struck me, but the same day, in the canoe, he told me that it was because the Indian should see it ; and I said to him that he ought not to have flogged so hard. In the canoe the people sometimes changed seats. The day that I embarked with Mr. Archy, there was sometimes one man, and at other times two men, between me and the gentlemen. I do not recollect whether I was next the steersman, or near the steersman. Lorrain paddled behind the gentlemen, and there were no other gentlemen on board than Mr. Archy, Mr. Grant, Cadotte, and De Reinhard, and they did not paddle. The Indian, Joseph, did not paddle ; yet he is certainly not one of the gentlemen. I do not know for certain that all the people in the canoe heard me when I related that the Indian, Joseph, wanted to kill Keveny. I do not know whether I could be heard by all the people or not. I believe that the canoe was under way at the time, but if it had been lying still they would have heard me. It was the same evening, I believe, that I recounted to the gentlemen and to the others, the occurrence between the Indian and Keveny, when he wanted to kill Keveny. I never said, nor I never heard Faye say, that he and another repaired with the Indian, Joseph, to the entrance of Keveny's tent with stakes to finish him, or to kill him, if the Indian missed him ; but I said that the Indian had cut stakes, and that he brought them to us, shewing us with his gun, and by his signs giving us to understand, that if he missed his aim, we were to do it with the stakes.

bien frappé, il avoit le cœur assez noir pour le faire ;” et je suis aussi sûr que devant moi il n’a pas dit aucunes autres paroles semblables, à ce que j’ai entendu. Je ne sais pas si les autres dans le canot entendoient monsieur Grant, quand il m’a dit, “venez, venez, essayez de le défendre, vous serez bien reçus ; je vous ferai manger ce qu’il y a dans mon fusil ;” il le disoit de la place où il étoit dans le canot.

*Chief Justice Bowen.*—Le canot marchoit-il alors.

*La Pointe.*—Je ne sais pas si le canot étoit alors arrêté, où s’il marchoit.<sup>(15)</sup>

*Cross examination continued by Mr. Vallière de St. Réal.*

*La Pointe.*—Le Vasseur, Mainville, et quelques autres Bois Brûlés, parloient tout haut, comme il faut, de tuer Keveny ; et tous dans le canot en faisoient une risée, et ils parloient haut comme il faut. C’étoit dans le canot avant d’arriver à l’isle où nous avons trouvé Keveny, que De Reinhard a parlé de tuer Keveny, et il l’a dit de la ma-

(<sup>15</sup>) I do not remember having said, nor having heard Faye say, that the reason why Keveny had not been killed, was because the Indian had done nothing, and the matter remained as it was. Faye did not say, to my knowledge, and certainly no before me, “If we had not besought La Pointe, Keveny would have been killed ; La Pointe would have struck the blow, his heart was black enough to do it ;” and I am also certain, that he never uttered in my presence, any other words to the same effect, as far as I heard. I do not know whether the others who were in the canoe heard Mr. Grant, when he said to me, “come, come, try to forbid him, you shall be well received, I would make you swallow what I have got in my gun. He said it in the canoe, in the place where he sat.

*Mr. J. B.*—Was the canoe then under way ?

*L. P.*—I do not recollect whether the canoe was at the time lying still, or whether it was going on.

nière qu'il avoit coutume de parler, non pas en secret, mais tout haut, et les mots étoient, "J'en anrai bien soin, c'est moi qui le tuera." C'étoit au tems que les Bois Brûlés tenoient le propos de tuer Keveny, et de partager ses hardes et son butin, que De Reinhard a dit ceci. Quand on est arrivé à l'endroit où nous avions laissé Keveny, et ne le trouvant pas, les gens du canot n'avoient pas l'air chagrin, mais ils avoient la même mine qu'à l'ordinaire. Je ne me souviens pas s'ils ont chanté dans cette journée, mais c'est rare qu'on va une journée sans chanter. La dernière fois que j'ai vu monsieur Keveny, et c'étoit au tems quand on l'a laissé avec De Reinhard, Mainville et José, il étoit habillé plus proprement que je ne l'avois jamais vu auparavant. Les hardes qui étoient dans le canot n'étoient pas les mêmes qu'il avoit sur lui quand nous l'avons quitté, parceque Mainville m'a dit qu'il avoit changé ses habits avant d'embarquer, (\*\*)

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(\*\*) Le Vasseur, Mainville, and some other Bois Brûlés spoke quite loud, properly so, of killing Keveny, and all in the canoe made a jest of it, and they spoke loud, properly loud. It was in the canoe, before we came to the island where we found Keveny, that De Reinhard spoke of killing Keveny, and he said it in the same manner as he generally spoke not aside or secretly, but aloud, and the words were, "I will take good care of him, it is I who will kill him." It was at the time that the Bois Brûlés were expressing themselves about killing Keveny, and dividing his clothes and things, that De Reinhard said this. When we came to the place where we had left Keveny, and he was not to be found, the people of the canoe had no appearance of being chagrined, but they were in the same humour as usual, I do not recollect whether they sang that day, but it is seldom that a day passes without singing. The last time I saw Mr. Keveny, and that was at the period when we left him with De Reinhard, Mainville, and Joseph, he was better dressed than I had before seen him. The clothes which were in the canoe, were not the same as those which he had on when we left him, because Mainville told me that he had changed his dress before he embarked.

*Mr. Vallière de St. Réal.*—The Court, I hope, are not taking down the latter part of this answer, it forms no part of an answer to any question I have put to him.

*Chief Justice Sewell.*—I most certainly am, Mr. Vallière and feel myself bound to do so.

*Mr. Vallière de St. Réal.*—I must most certainly then, with great submission to the Court, object to its being taken; it is at the best, but mere hearsay evidence.

*Solicitor General.*—I must submit to the Court, that there can not be a doubt but that the whole of a witness's answer should be taken, indeed, after the learned gentlemen have, in the course of this trial, themselves successively insisted, that the entire answer of a witness shall be invariably taken when it makes for them, I did not expect from my learned friend such an objection. The witness is asked a question, the object of which can not, for a moment, be concealed; the witness, in the former part of his answer, appears to meet the wishes of my learned friends, but when he offers to account for this apparent weakening of the evidence on the part of the Crown, then he is to be immediately stopped. I trust that the Court, thinking us fully entitled to the answer as the witness gives it, will insert it entire on their notes. The learned gentlemen must be aware that we could have it on your honour's notes by re-examining the witness, but it would be a waste of your honour's time, as well as a deviation from every principle of regularity.

*Mr. Vallière de St. Réal.*—I beg leave to differ with the learned Solicitor General, and to contend, that the situations of the parties call for the application of the principle in the manner I am assuming myself to be entitled to, when I object to a part of the witness's answer, and that a part.

founded upon mere hearsay, which of itself I should consider sufficient to invalidate its reception. If the principle contended for by Mr. Solicitor General is correct, a prisoner, or defendant, had, in many instances, better surrender his right of cross examination, than incur the risk of being compelled to have every thing, or any thing, which either the ignorance or malice of a witness may suggest; but if, upon an examination in chief, a witness admits any thing that is favourable to the opposite party, it is the undoubted right of, particularly, the defendant, to have the entire answer taken down, because the witness, adduced with all that bias on his mind, which the freedom allowed in cross examination, pre-supposes him to have towards the party bringing him before the Court, has himself benefited the prisoner by his testimony, at the very moment that a contrary effect was intended by its production. The mild spirit of British law gives to the accused every advantage that can be done consistently with the attainment of justice, whilst, considering the strength of the Crown, in its character of public prosecutor, it is inclined to extend, rather than limit, to the prisoner, the exercise of every privilege to which he is, by the laws, entitled. But, if under a cross examination, it is permitted to a witness to introduce in answer to a direct question any extraneous observations of his own, or, as in the present instance, mere hearsay evidence of what some other person told him, and it is competent to the officers of the Crown to insist on having it taken down, we are then so completely at the mercy of the malice or ignorance of either a wicked or an uninformed witness, that the great and extensive benefits which are the usual consequences of a cross examination, are done away, and the freedom allowed in them is

only likely to be a fruitful source of danger to the unfortunate prisoner.

*Mr. Justice Bowen.*—If no evidence had been offered to prove a connection between these two persons, I should certainly concur with you in opinion, Mr. Vallière, that your case ought not to be affected by the evidence that Mr. Solicitor General has contended ought to appear upon our notes, but unfortunately the case is different, for evidence has been introduced, which most clearly and distinctly connects De Reinhard with Mainville, and till that evidence is rebutted, I certainly think the Crown are entitled to have inserted upon our notes any proofs that may be extracted from a witness, at any period of his examination, of acts done by either, in the presence of the other. I am now speaking upon the evidence, as it stands at present; hereafter you may produce testimony to completely invalidate all that has been produced. But as the case stands, it has arrived to this point, as I take it. Some clothes, a coat, is produced, it is identified as having been in the canoe, in which Mainville, De Reinhard and José, the three persons with whom the deceased was in company the very last time he was seen, arrived a few hours after the witnesses had so left him in their company; it is sworn to, as being a coat belonging to Keveny, and, upon examination, it proves to be pierced in two places, so as to have a corresponding appearance to that which, from the manner the indictment alleges that Keveny met his death, it might have been expected the coat he then wore would have presented. To remove the effect, or weaken the impression, of this secondary evidence, corroborated by other parts of the testimony, you ask him how Mr. Keveny was dressed at the time he left him, (which, as far as we know at present,



was the last time he was seen, except by those in whose company he was left,) and he answers, that he was well dressed, habited like a monsieur, and better dressed than the witness had ever seen him before; comparing this with the coat produced, there appears to be a doubt thrown upon the testimony, by the difference between the coat produced, and that which we might, from the former part of his answer, have expected to have had exhibited; but in explaining what, if left unexplained, might seem to be an impeachment of his own evidence, he says, "Mainville told me that before embarking he changed his dress," and I clearly think that a connection at present being in evidence between Mainville and De Reinhard, that what Mainville said may be adduced in evidence.

*Mr. Vallière de St. Réal*—Not, I hope, to make him answerable for what it is not attempted to be proved was said in his hearing.

*Mr. Justice Bowen*.—In my opinion, it is admissible evidence to go to the jury; they can do as they like with it. I do not know whether my learned brother, the Chief Justice, concurs with me.

*The Chief Justice expressing his concurrence,*

*The cross examination was continued by Mr. Vallière de St. Réal.*

*La Pointe*.—Dans ces endroits, et à la place où nous avons trouvé monsieur Keveny, il y a des Sauvages qui vivent de la chasse, et les coups de fusils sont fréquens. Quand De Reinhard a séparé le butin de Keveny, et dit qu'il auroit le choix, parcequ'il l'avoit tué, tous les autres, excepté monsieur Archy, étoient présens, à ce que je crois. Quand je parle de monsieur Archy, j'entends dire monsieur Archibald M'Lellan. En

allant au Lac la Pluie, c'étoit à la main droite, (ou par le rivage sud,) de la Rivière Winnipic; où, pour la dernière fois, j'ai vu monsieur Keveny; la main droite en remontant la rivière pour aller au Lac des Bois. J'ai été envoyé par le capitaine D'Orsonnens au Fort William avec Faye. Depuis le dernier procès, j'ai parlé avec quelques personnes et elles m'ont dit de dire la vérité, et même de prendre la communion, et de faire la confession, avant de rendre mon témoignage ici. Je ne suis pas engagé au service de la Société de la Baie d'Hudson, ni de Lord Selkirk. J'ai été actionné par monsieur Coltmah, à la Rivière Rouge, de descendre, et il m'a cautionné de dire la vérité. C'est monsieur Gauvin, l'huissier de Montréal, qui paye nos vivres à-présent, à ce que je crois. Milord Selkirk m'a dit que quand la cour et tout sera fini, je serai bien payé. Il m'a donné un peu d'argent dans le tems que j'étois dans le nord. Je n'ai reçu que vingt cinq piastres de la compagnie du Nord-Ouest, pour six mois que j'ai fait avec eux; mais j'attends d'eux le reste. Je connois monsieur Forrest à Montréal. Il est l'agent de Milord Selkirk. Il m'a donné des cinq piastres en différens tems. Il m'a donné peut-être trente piastres, peut-être quarante; je ne puis pas dire exactement, mais je n'ai pas reçu plus de cinquante piastres de lui. Je demeure à présent à L'Assomption. (\*)

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(\*) In those parts, and in the place where we found Mr. Keveny, there are Indians who live by hunting, and the noise of guns is frequently heard. When De Reinhard divided Keveny's things, and said that he would have the choice because he had killed him, all the others were present, as far as I believe, excepting Mr. Archy. When I speak of Mr. Archy, I mean Mr. Archibald M'Lellan. In going to Lake la Pluie, it was on the right hand, (or, reckoning by the banks, the south bank,) of the River Winnipic, where I saw Mr. Keveny for the

LOUIS NOLIN *Sworn.**Examination conducted by the Solicitor General.*

*Louis Nolin.*—J'étois dans le pays Sauvage, au Lac de la Pluie, en 1816; alors, et avant d'arriver là, j'ai entendu parler par les Sauvages d'un meurtre commis à la Rivière Winnipic, mais dans ce tems là, je ne savois pas de qui. J'allois alors vers la Rivière Rouge, avant d'aller au Lac la Pluie. J'ai continué ma route vers le Lac la Pluie après cette information, et on a rencontré un canot, dans le canot étoient les nommés Dease, La Pointe, et trois ou quatre autres, et c'est d'eux que j'ai appris qu'un meurtre avoit été commis. J'ai continué ma route après, jusqu'au Lac la Pluie, où j'ai arrivé au commencement du mois d'Octobre. J'avois reçu des ordres du capitaine D'Orsonnens, d'arrêter De Reinhard qui étoit au Lac la Pluie, c'est-à-dire, de le prier d'attendre l'arrivée du capitaine D'Orsonnens, mais je n'a-

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last time The right hand in ascending the river to go to the Lake of the Woods. I was sent with Faye, by captain D'Orsonnens to Fort William. Since the last trial I have conversed with several people, who told me to tell the truth, and even to take the sacrament, and to go to confession, before giving my testimony here. I am not engaged in the service of the Hudson's Bay Company, nor of Lord Selkirk. I was served with a writ by Mr. Coltman at Red River to come down, and he admonished me to speak the truth. It is Mr. Gauvin, the sheriff's officer of Montreal, who pays for our board at present, I believe. My Lord Selkirk told me that when the Court and all was over, I should be well paid. He gave me a little money when I was in the north. I received no more from the North-West Company during the six months I was with them, than twenty five dollars, but I expect to get the remainder from them. I know Mr. Forrest at Montreal; he is my Lord Selkirk's agent. He has given me sums of five dollars at different times; He has given me perhaps thirty dollars, perhaps forty, I can not say exactly; but I have not received more than fifty dollars from him. I reside at present at L'Assomption.

vois aucun ordre de l'arrêter par force, ou de le faire prisonnier, mais de tâcher d'avoir des informations de ce que s'étoit passé à la Rivière Rouge. En arrivant au Lac la Pluie, j'ai couché ce soir-là chez deux hommes libres, et de là, le lendemain, je me suis rendu au fort. J'ai entré dans la chambre de monsieur Sayer. Monsieur Alexandre M'Donald a entré dans la chambre de De Reinhard, et un peu de tems après tous les cinq, c'est-à-dire moi, Sayer, Roussin, M'Donald, et un autre, sont entrés dans la salle d'une autre chambre ensemble. De Reinhard avoit un papier dans sa main, un billet, et, se promenant dans la chambre, disoit qu'il étoit bien surpris que le capitaine D'Orsonnens vouloit avoir des informations de lui de la Rivière Rouge. Monsieur De Reinhard ne parloit pas d'autres affaires. Trois ou quatre heures après, le capitaine D'Orsonnens est arrivé, et un moment après que le capitaine D'Orsonnens arriva au fort, il s'est promené dehors avec De Reinhard. Je les ai suivis, et je me suis promené avec eux. Je n'ai pas entendu le commencement de leur conversation ; ils étoient restés quelque tems ensemble avant que j'aie été les rejoindre.

*Mr. Justice Bowen.*—Avez-vous fait vous-même, ou avez-vous entendu aucune autre personne, faire des promesses ou menaces ?

*Louis Nolin.*—Non, vos seigneuries.

*Solicitor General.*—Racontez la conversation. (")

(") *L. N.*—I was in the Indian country, at Lake la Pluie in 1816. Then, and before I arrived there, I had heard the Indians speak of a murder committed at the River Winnipic, but at that time I did not know upon whom. I was then going towards Red River before getting to Lake la Pluie. After I received this information, I continued my route towards Lake la Pluie, and a canoe was met with, and in the canoe were, the person named Dease, La Pointe, and three or four others, and it is from them that I learnt that a murder had been committed. Afterwards I continued my route till I got to Lake la Pluie,

*Chief Justice Sewell.*—Stop if you please, Mr. Solicitor General, we must go farther than that. We must know the commencement of this conversation.

*Mr. Stuart.*—Will the Court just allow me to ask the object of producing this conversation. Is it to prove a confession?

*Solicitor General.*—Yes, it is.

*Mr. Stuart.*—Then, to this course of the Crown lawyers I most certainly object; indeed I can not but express my surprise that it should be attempted; for what is it but an attempt to call a witness to corroborate what is not proved. This pretended confession is attempted to be corroborated before the fact of the death, according to our judgment, is proved; but, waiving that, for the present, it is now proposed, to support, by way of a corroborating testimony, a fact to which no

where I arrived in the beginning of the month of October. I had received orders from captain D'Orsonnens to stop De Reinhard, who was at Lake la Pluie, that is to say, to desire him to wait captain D'Orsonnens' arrival; but I had no orders to detain him by force, or to make him prisoner, but to endeavour to obtain information of what had occurred at Red River. On my arrival at Lake la Pluie, I slept that evening with two free-men, and from there, on the next day, I went to the fort. I entered Mr. Sayer's room. Mr. Alexander M'Donald went into De Reinhard's room, and a short time after all the five, that is to say, myself, Sayer, Roussin, M'Donald, and another, entered together into the room of another apartment. De Reinhard had a paper in his hand, a note or letter, and walking in the room, said that he was much surprised that captain D'Orsonnens wanted him to give information about Red River. Mr. De Reinhard spoke of nothing else. Captain D'Orsonnens arrived three or four hours afterwards, and he walked with De Reinhard out of doors. I followed them and walked with them. I did not hear the beginning of their conversation; they were some time together before I went to join them.

*Mr. J. B.*—Did you yourself, or did you hear any other person, make any promises or threats?

*L. N.*—No, your lordships.

*S. G.*—Relate the conversation.

evidence whatever that can be received for a moment has been even offered. What may be the result of such a course? why, that when captain D'Orsonnens is called, his evidence may prove, and if not wrongly instructed, it will prove, that every thing connected with this pretended confession is totally inadmissible. If I am not wrongly instructed, (and I have little reason to apprehend that I am,) we shall prove it to result from a fear amounting to absolute terror, produced by a series of unheard of aggressions and violence, such as never was before seen on this continent, and such as, for the sake of humanity, it is to be hoped never will again disgrace it. I should be wasting the time of the Court to attempt to establish the inadmissibility of a confession obtained under such circumstances, circumstances which in their nature are without a parallel, and of a description, that, to avoid their effects, the most innocent man might be induced to confess or even accuse himself of crime. The authorities which prohibit the admission of a confession under even the slightest expectation of reward, or apprehension of punishment, are as numerous as they are familiar to every lawyer.—*Mr. Stuart taking a book in hand and opening it—*

*Chief Justice Sewell.*—I do not, Mr. Stuart, see any necessity for your troubling yourself to adduce authorities on the subject, at least at present, or indeed at all, for if you can shew that the confession was improperly obtained, doubtless it can not be received as evidence; but unless we have the commencement of the conversation which prefaced the confession, we are in the dark as to the circumstances which induced it. We must know the beginning of this conversation, and as you have captain D'Orsonnens here, with whom it commenced, why not examine him, and we shall

be able, immediately and satisfactorily, to decide whether or not it can be permitted to go to the jury.

*Attorney-General.*—With the permission of the Court, I will state the course which we proposed to pursue in laying the case before the jury and your honours. We intended to produce the witnesses in the order of time, in which events to which they had to testify took place, but to save the necessity of calling the same person twice, to let him testify at once, to all he knows, though part of the evidence may perhaps appear rather antecedent to what might have been, by a different course, brought forward. This witness (Nolin) first saw him, therefore we think we had better examine him because it is consistent with the order of time in which the circumstances occurred, and as the witness is thus brought forward, we think we had better finish with him at once, than to leave off here and have to call him again in a subsequent stage of the proceedings.

*Chief Justice Sewell.*—To whom was this confession made that you are desirous of proving? to captain D'Orsonnens, whom you do not bring forward, but endeavour to prove it by a witness who sets out by telling you that he was not present at the commencement of the conversation in which the confession was made. Certainly then not at this bar, or in any other English Court, would such a course be permitted, till the enquiry has gone on; did you, or any person in your hearing, make use of any promise or threat? did you or any one else, induce him to believe that it would be to his advantage, that it would be better for him, to confess, or that it would be worse for him that he did not confess. A confession can not be admitted till by these questions, or similar interrogatories, having been satisfactorily answer-

ed, it shall be placed beyond even the possibility of suspicion, that it was a voluntary, free, and spontaneous confession; whether it was or was not, can not certainly be proved by a person who sets out by saying that he was not present at the commencement of the conversation in which it was made, having joined the parties afterwards.

*Attorney-General.*—We can call captain D'Orsonnens first, if the Court think that the preferable course. Our only reason for introducing Nolin now, was that he first saw De Reinhard, and we therefore thought that the better method would be to take that course, and that, having him in the box, we had, to save time, better finish our examination of him entirely. We have no objection to call captain D'Orsonnens if the Court think proper.

*Chief Justice Sewell.*—You certainly can not by this witness get admitted the confession, which you are desirous of proving, because he is incapable of proving the indispensable preliminary, namely, that it was freely and voluntarily made, and therefore entitled to be received. He can, however, answer for himself whether he did any thing, the effect of which would be to destroy it, and then if he answers in the negative you can call captain D'Orsonnens and the examination can go on.

Avez-vous, monsieur Nolin, fait aucunes promesses à De Reinhard, ou aucunes menaces quelconques, aucune promesse d'avantage s'il confeseroit, ou aucune menace de punition, s'il ne faisoit pas une confession?

*L. Nolin.*—Non monsieur, point du tout.

*Chief Justice Sewell.*—Ni l'un, ni l'autre?

*L. Nolin.*—Non, monsieur, je n'ai pas fait aucunes promesses, ni aucunes menaces au prison-



nier pour l'induire de faire une confession, ni autrement. (°°)

Captain PROTAIS D'ORSONNENS, Sworn.

*Examined by the Attorney-General*

*Capt. D'Orsonnens.*—Je suis capitaine à demi-payé, du régiment de Meuron. En 1816, j'étois dans le pays Sauvage, plus haut que Fort William. En Octobre, le second ou troisième jour j'étois au Fort du Lac de la Pluie. (°°)

*[Captain D'Orsonnens here intimated that he could wish the Attorney-General to commence at an earlier period, as there were some circumstances, which as they were favourable to the prisoner, and might be of benefit to him, he was desirous of stating; they had occurred anterior to the period to which the Attorney-General had directed his attention. After some remarks by Mr. Stuart, on the singularity of a witness wishing to suggest to the Crown officers a course of examination, and disclaiming any desire to profit by the offer, the examination was continued.]*

*Capt. D'Orsonnens.*—Je connois le prisonnier à la barre, Charles De Reinhard, et le second ou

(°°) C. J. S.—Did you, Mr. Nolin, make any promises to De Reinhard, or any threats whatsoever. Any promise of advantage in case he confessed, or any threat of punishment, if he made no confession?

L. N.—No Sir, not any.

C. J. S.—Neither one nor the other?

L. N.—No, Sir, I neither made any promises, nor any threats to the prisoner, to induce him to make a confession, nor otherwise.

(°°) I am a half pay captain of the regiment of Meuron. In 1816, I was in the Indian country, beyond Fort William. In October, the second or third day, I was at the Fort of Lake la Pluie.

troisième jour d'Octobre 1816, je l'ai rencontré en dehors, ou devant, le Fort au Lac la Pluie. Lors que j'ai arrivé au Lac la Croix, un petit Lac entre Fort William et le Lac de la Pluie, j'ai rencontré plusieurs Sauvages, et j'ai appris d'eux que les Métifs, aussi bien que les gens de la société du Nord-Ouest, nous gardoient dans la Rivière Winnipic pour nous détruire; et ils m'ont dépeint un militaire, blanc comme un de ceux qui nous gardoient, et par la description, je n'avois nul doute que c'étoit De Reinhard. Le lendemain, à ce que je crois, j'ai rencontré monsieur Dease, et j'ai demandé si De Reinhard étoit au Lac la Pluie, et il m'a dit qu'oui. En conséquence, j'ai envoyé monsieur Nolin et M'Donald, quand nous étions à trente lieues près du Lac de la Pluie, en avant, pour porter un billet de ma part, et la proclamation de Sir John Coape Sherbrooke du 16 Juillet, 1816; le tout adressé par moi à monsieur De Reinhard. Dans le billet, je le priois de m'attendre, désirant avoir de lui des informations sur ce qui s'étoit passé à la Rivière Winnipic. Le second ou troisième d'Octobre au matin, j'ai débarqué à deux ou trois milles du fort, et avant d'arriver au fort, j'ai rencontré deux hommes libres qui demeurent à un mille du fort. Les deux hommes s'appellent Sans-souci et Bonar. J'ai été au fort par terre, et monsieur Dease fit le tour par eau, je suis arrivé le premier, et De Reinhard en me voyant vint au devant de moi pour me rencontrer; il me donna la main, disant qu'il étoit extrêmement fâché de me voir dans ce pays-là, que ma vie étoit en danger ainsi que celle des personnes qui m'accompagnoient; qu'il y avoit des Métifs et plusieurs engagés de la compagnie du Nord-Ouest, qui, déterminés à détruire l'établissement de Milord Selkirk, attendroient ses gens dans la Rivière Winnipic; et que lui

même avoit fortifié le fort au Bas de la Rivière Winnipic, avec cinq ou six pièces de canons, pour tirer sur les Anglois quand ils descendroient. Dans ce moment, monsieur Dease arriva, il me pria d'entrer au fort, et nous y entrâmes, et De Reinhard entra avec nous. Avant d'entrer, De Reinhard m'a dit "qu'à quelque moment, quand nous serions seuls, il prendroit occasion, en conséquence de la proclamation, de me dire tout ce qu'il savoit de ce qui s'étoit passé au sujet de la Rivière Rouge, et à la Rivière Winnipic." Quelque tems après, une demi-heure après je pense, j'ai sorti du fort, et De Reinhard m'a suivi. Il m'a dit "qu'il avoit été laissé par monsieur Archibald M'Lellan au Lac la Pluie, pour lui annoncer notre arrivée, et qu'ils étoient déterminés, (les Boia Brûlés ou Métifs, ainsi que les gens de la compagnie du Nord-Ouest,) de nous attendre dans quelques rapides dans la Rivière Winnipic, pour nous détruire."<sup>(\*)</sup>

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(\*) I know the prisoner at the bar, Charles De Reinhard, and on the second or third of October 1816, I met him on the outside of, or in front of, the fort of Lake la Pluie. When I came to Lake la Croix, a small lake between Fort William and Lake la Pluie, I met several Indians, and from them I learnt that the Métifs, together with the people of the North-West Company, watched for us in the River Winnipic to destroy us, and they described to me a military man, white, like one of those who formed our guard, and by the description I had no doubt that it was De Reinhard. On the following day, I believe it was, I met Mr. Dease, and I asked whether De Reinhard was at Lake la Pluie, and he told me that he was. In consequence, when we were at thirty leagues distance before coming to Lake la Pluie, I sent Mr. Nolin and M'Donald forward, to carry a letter from me, together with Sir John Coape Sherbrooke's proclamation of the 16th of July 1816, the whole directed by me to Mr. De Reinhard. In the letter I requested him to wait for me, as I desired to receive information from him as to what had passed at the River Winnipic. On the second or third of October in the morning, I landed two or three miles from the fort, and before I reached the fort, I met two freemen, who reside a mile

*Mr. Stuart.*—I can not conceive that this has any thing to do with the question at all. The questions of the Crown lawyers I consider as far, very far, beyond the limits of evidence. The simple question before us is to ascertain whether the prisoner at the bar is guilty or innocent of the charge preferred against him in the indictment, instead of which, by the mode pursued by the Crown lawyers, we are getting into a wide story, that it is impossible to see where it may lead us. What have we to do with Métifs, Bois Brûlés, or the North-West Company, or my Lord Selkirk, or any individual, except the prisoner at the bar. This wholesale method of casting implications on other persons, on persons who have no opportunity of repelling them, who are precluded from answering slanders of the grossest nature, is cer-

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from the fort. The names of these two men are Sans-souci and Bonar. I proceeded to the fort by land, and Mr. Dease made the trip by water. I arrived the first, and De Reinhard on seeing me, came forward to meet me; he shook hands with me, saying he was extremely sorry to see me in that country; that my life was in danger as well as the lives of those who accompanied me. That there were Métifs and several engagés of the North-West Company, who, being determined to destroy my Lord Selkirk's establishment, would wait for his people in the River Winnipic; and that he himself had fortified the fort at Bas de la Rivière with five or six pieces of cannon, to fire upon the English when they should come down. At that moment Mr. Dease arrived, and desired me to walk into the fort, and we entered it; and De Reinhard entered with us. Before we went in, De Reinhard said to me, "that at some time when we might be alone, he would take the opportunity, in pursuance of the proclamation, to tell me all that he knew of what had happened relative to Red River, and at the River Winnipic." Some time afterwards; half an hour afterwards, I think, I went out of the fort, and De Reinhard followed me. He told me that "he had been left by Mr. Archibald McLellan at Lake la Pluie, for the purpose of apprising him of our arrival, and that they, the Bois Brûlés or Métifs, as well as the people of the North-West Company, had determined upon waiting for us at some rapids in the River Winnipic, in order to destroy us."

tainly a practice as unjustifiable, as it is novel. It may be, perhaps, of little consequence, in some quarters, whether this prisoner is acquitted or convicted, provided his trial furnishes an opportunity for giving vent to those feelings of animosity which a great commercial rivalry has probably given rise to. The conduct of this witness I consider extraordinary in the extreme. What is the course he is pursuing under the semblance of giving evidence against a single individual upon a specific charge, in which the time, the means, and every other particular, that is connected with, or calculated to produce, the alleged death is most explicitly set forth in the very long, (though perhaps not unnecessarily long,) indictment before the Court, I say what is the course this witness is endeavouring to pursue? why to charge in the lump the whole North-West Company with murder, or an intention to commit that crime. This may perhaps, be considered a sure and safe way of propagating libels, which, if published in any other way, would subject the slanderers to prosecution, but it is probably calculated that in the shape of testimony given in a Court of justice, that as these proceedings will probably be presented to the world, publicity will, with impunity, be afforded to calumnies which in no other way would sufficient temerity be found to hazard. As well might this witness libel any gentleman in this Court, the spectators, the bar, the jury, or even the Court itself, as those whom he is thus indiscriminately calumniating. How are they to meet these charges? what method shall they take to vindicate themselves, and rescue their honourable characters from these aspersions? indeed the whole conduct of this witness I will venture to say is completely unprecedented. He sets out by volunteering something which he says will be of ser-

vice to the prisoner, and manifesting a degree of anxiety to benefit him, directs the Crown officer in what manner to conduct this examination. As it is the first, so I trust it will be the last, instance ever witnessed of a witness directing or dictating how his examination shall be carried on; it is quite sufficient, in discharge of the duty every individual owes to the country, to further the course of public justice by giving evidence in its public Courts, to give that testimony which is sought for by those who, from their official situations, are best acquainted with what will be conducive to its attainment. My suspicions were immediately excited when the witness stepped forward in this manner; notwithstanding the boon which was proffered, I did not believe in the sincerity of the offer, and I rejected it. We were not thus to be lulled into confidence, and the justice of our resolution, I think, is now sufficiently apparent. But, relative to this unwarrantable attack upon gentlemen who have no opportunity of meeting these gross libels, for no softer term can I use to correctly designate these slanders, I shall once for all say that whenever the private prosecutor in this case may think proper to become so against them, the North-West Company will not shrink from any investigation into their conduct, so far from it, they will hail the day that enables them, before the world, to vindicate their characters from aspersions, calumnies, and libels, which have, for a length of time, been circulating with an avidity and industry proportioned to the rancour and falsehood which gave them birth and currency. All we ask is to give us notice when we are to be put upon trial, and we are ready and willing and most anxious to meet it. But I do most sincerely trust that the Court will interpose its authority, and prohibit this most unwarrantable and dangerous

stride, under the guise of giving evidence of a pretended confession made by the prisoner, for I repeat that it is not impossible, but it may be a matter of indifference, at least comparatively so to some, who appear to manifest the greatest anxiety to promote the public justice of the country, by bringing offenders to trial and punishment; I say that it may be, not that it is, but that it may be, a matter of indifference, whether this prisoner is acquitted or convicted, if by the trial they are enabled to give publicity to calumnies, with safety from the consequences that in any other way would inevitably attend the propagation of libels. I object indeed to the evidence being received.

*Chief Justice Sewell.*—What do you object to his own confession being received. You will certainly assign to us some reasons for so doing. I confess I do not at present see what is to prevent its being gone into. If the confession was made without any promise or menace being used to induce or influence the prisoner to make it, I do not see to what end the objection is made. These questions have not as yet been put, perhaps they might as well, as it will immediately decide the question of admissibility. If the witness asserts that it was made freely, I do not see to what end the objection can be made.

*Mr. Vanfelson.*—A la fin, s'il plaît à la Cour, qu'il ne soit pas permis au témoin d'en accuser d'autres au moyen de son témoignage de la confession qu'il dit que le prisonnier à la barre a faite. La charge maintenant devant la Cour est la charge de meurtre, et cette charge est contre le prisonnier à la barre. Mon savant confrère monsieur le Procureur Général se propose, dans ce moment, de produire la confession du prisonnier; mais le témoignage du capitaine D'Orsonneux

n'est pas borné à la confession du meurtre, et nous prenons la liberté de soumettre à la Cour que cette marche n'est pas régulière.<sup>(22)</sup>

*Chief Justice Sewell.*—The Attorney-General proposes to introduce here a confession, made by the prisoner himself to captain D'Orsonnens, to which you object, nor do I at all wonder at the opposition, as; if the confession be admitted, the effect it must produce upon the case, can not but be of the utmost importance. In stating the objection, some observations have been made upon the witness now in the box, observations no doubt dictated by a sense of duty in the gentleman who made them; but I am free to confess that I have seen nothing in the conduct of the witness, that exposes him to even the slightest imputation of impropriety, or that by any thing he has done, he has incurred even the shadow of blame. The Crown commences its examination of him, and captain D'Orsonnens, with that feeling which might readily be supposed to exist in his bosom for a fellow soldier, of the same regiment, states his wish to suggest some circumstances that took place previous to the time which the Attorney-General takes as the commencement of his examination, and he assigns as a reason for his wishing to do so his own opinion that they might weigh considerably in his favour. You did not appear to see that it might weigh in his favour, I think I

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(22) In order, if it please the Court, that this witness may not be permitted, by means of his testimony regarding the confession, which he says the prisoner at the bar made, to accuse others. The charge at present before the Court, is a charge of murder against the prisoner at the bar. My learned brother, the Solicitor General, now proposes to bring forward the confession of the prisoner, but the testimony of captain D'Orsonnens is not confined to the confession of the murder, and we take the liberty of submitting to the Court that this course is irregular.



do, and, although a little out of the regular course, I think, as it was a voluntary offer, you might have availed yourself of it. It could certainly have done you no harm, as he was not your witness.

*Mr. Stuart.*—Yes, but your honour knows

*"timeo Danaos et dona ferentes."*

*Chief Justice Sewell.*—With respect to where we are now, the question appears to be, supposing that it shall turn out that the circumstances under which this confession was made, do not preclude its being admitted as evidence to go to the jury, whether the whole or a part of that declaration shall be received. Whether half the confession shall go. On this point I am decidedly of opinion that his confession such as he did make, if admitted at all, must be taken entire. That the declaration once being admitted, it must be taken from beginning to end. It is his own statement of his own conduct, and whatever it may be, it can affect nobody but himself. Although in this conversation or confession, there may be introduced reflections upon the North-West Company, or statements relative to them, they can be in no manner affected by them, they are merely the statements of an individual, *ex parte*, and no way obligatory upon those to whom they may refer. His statement, such as it is, if entitled to admission at all, must be taken just as it was made, as a whole. The Crown most undoubtedly are entitled to have it, and any part that does not directly apply to this case, can not, from its merely appearing to implicate others, at all affect or bind them, because it is merely an assertion, and completely *ex parte*, but it is not therefore to be excluded. It forms a part of what he did say, and therefore must be given in evi-

dence, otherwise we might do him or the Crown an injustice.

*Mr. Justice Bowen in concurring in the opinion as delivered by his honour the Chief Justice, remarked that it might be an act of the greatest injustice to the prisoner, to separate or keep back any part of his confession, and that his story, let it make what it would either for or against him, must undoubtedly be taken as a whole, just as he told it.*

*Chief Justice Sewell.*—Capitaine D'Orsonnens, je voudrois savoir si vous avez fait au prisonnier, avant qu'il ait fait la déclaration, aucune promesse, ou aucune menace, pour l'induire à la vous déclarer?

*Captain D'Orsonnens.*—Non, point du tout. Il le dit comme une matière de conscience. ("")

*Examination continued by the Attorney-General.*

*Captain D'Orsonnens.*—Le prisonnier m'a alors parlé d'un assassinat qui avoit été commis dans la Rivière Winnipic; et il a ajouté qu'il se croyoit obligé, comme un honnête homme, et en raison de cette proclamation, de révéler les circonstances, pour l'information et le bien du gouvernement de sa Majesté, d'un assassinat qui avoit été commis.

*Chief Justice Sewell.*—Excusez moi, capitaine D'Orsonnens, mais je voudrois encore vous demander, si vous êtes sûr que nous n'avez fait ni aucune promesse, ni aucune menace?

*Captain D'Orsonnens.*—Oui, votre seigneurie. Je ne lui ai fait aucune promesse, ni aucune me-

(") C. J. S.—Captain D'Orsonnens, I wish to know whether, before the prisoner made his declaration, you made him any promise, or any threat, to induce him to declare it to you.

C. D'O.—No, not any, he related it as a matter of conscience.

nace, et j'ignorois alors tout ce qui le concernoit. Je ne lui ai parlé ni pour ni contre.

*Attorney-General.*—Racontez ce qu'il vous a dit.<sup>(24)</sup>

*Mr. Stuart.*—I understand then that it is now proposed to prove this pretended confession. I am now in time, therefore, to object to its being admitted. There are two courses, I believe, open to me; 1st. to object to it now; 2d. to wait till the cross examination, and then prove that it is not evidence, and from the circumstances under which it was obtained, that it is entitled to no credit whatever. It will turn out, I think, that it ought not to be given in evidence at all, if I am permitted to put a few questions to captain D'Orsonnens. Should, however, the Court be of a different opinion, it will be subject to cross examination to prove that it is not, from a variety of circumstances, entitled to credit. I propose, however, not only as the safest, but also at the same time as the shortest method, to put a few questions to the witness, under a belief that his answers will prove that it is not evidence to go to the jury at all, for that the circumstances under which it was made, were such as completely to exclude it. These questions I apprehend will be

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(24) *C. D'O.*—The prisoner then spoke to me of an assassination that had been committed in the River Winnipic; and he added that he believed himself bound, as an honest man, and in pursuance of this proclamation, to reveal the circumstances of the assassination that had taken place, for the information and benefit of His Majesty's Government.

*C. J. S.*—Excuse me, captain D'Orsonnens, but I would again ask you, if you are certain that you made neither any promise, nor any threat?

*C. D'O.*—Yes, your Lordship; I neither made him any promise, nor any threat, and I was then ignorant of all that related to him. I said nothing to him either for or against.

*A. G.*—Relate what he told you.

very few, and they will be in the nature of an examination on the *voire dire*, to which course I believe I am fully entitled.

*Mr. Justice Bowen.*—Will you, Mr. Stuart, state the circumstances which you consider as entitling you to this examination, or what you propose to prove.

*Mr. Stuart.*—I intend to prove the existence of a private war between the Earl of Selkirk, in whose service this witness is, or was at the time this pretended confession is said to have been made; a war against the North-West Company, and that, in the prosecution of that war, this unfortunate individual at the bar, who was in the service of that company, fell into the hands of his enemies, and——

*Attorney-General.*—I really must beg to be permitted to interrupt my learned friend, but really I do not understand what he means by a private war. I do not see how we can, for a moment, allow the gentleman to reason upon a private war; a thing completely unknown, I believe, and which, could it even be proved to have existed in the fullest sense my learned friend contends for, could not certainly be offered as any justification for a murder, nor as a legal cause of influencing the mind of the prisoner.

*Mr. Stuart.*—I admit that it is, and certainly ought to be, a matter of regret that such a war did exist, and it may perhaps, at some future time, be a subject suitable for enquiry, why it was not prevented; but at present we have nothing to do with that. I will prove, and that too by the most positive evidence, that a private war did exist, and that in the progress of that war, the prisoner fell into the hands of the party belonging to the Earl of Selkirk. This party was in reality a military force, who had already cap-

tured by force of arms, and were then retaining by force, the principal station of the North-West Company. I say that it was a military force, because it was provided with every thing that would constitute it one, arms, accoutrements, ammunition, cannon, in short, equipments of every description. My learned friend, the Attorney-General, appears to treat the idea of a private war ludicrously, but such was the unfortunate state of this country, that, owing to the commercial rivalry, it did exist. The force on the one side was composed chiefly of men who had been trained to war; they had been soldiers in the regular army, and were commanded by officers of the army. The witness now in the box was at their head. He tells us that he is at this moment a half pay officer, and that he was formerly a captain in the regiment De Meuron, nor will it be considered, I think, otherwise than most extraordinary that this force was in the pay of the private prosecutor in this case, raised and equipped at his expense, to promote his own views of private advantage, and that the witness now in the box was his principal agent in these transactions, being at the head, or having the command, of this military force, or rather, from its illegality, this armed banditti. I remark again, that it is not a question whether this was a legal or an illegal force, whether it is not extraordinary that, with his elevation of rank, the private prosecutor should, in the promotion of schemes of secular advantage, the gratification of inordinate ambition, or to accelerate the destruction of a commercial rival, have not only forgotten what was due to those laws which his rank enabled him to assist in enacting, but actually have put himself at the head of a force to levy war, at his will and pleasure, against those whose only crime was, that in the peaceable pursuit of a lawful commerce,

they interfered with his gigantic and, perhaps, equally visionary, prospect of an exclusive sovereignty over an immense and indeed scarcely explored country; or whether it is not to be lamented that the government either did not possess, or did not exert, a power adequate to the prevention of this private war; all we have to do with at present, is the fact, that it did exist, and the consequences of its so existing. The causes which originally led to it, the means by which it was supported, and the reasons for which it was not, or could not, be prevented, are topics for discussion, probably in another place, but most certainly at another time.

*Attorney-General.*—The statement of my learned friend is certainly one that completely surprises me. As to the term private war, I really know of no such thing, nor can it, according to my opinion, exist. If the statement I alluded to just now is founded on fact, it constitutes the crime of high-treason, but surely the gentleman does not consider an accusation of high treason against certain persons, even were it susceptible of the clearest proof, to be admissible as contradictory or exculpatory evidence on a charge of murder. I really do not see what object is to be attained by the course my learned friend proposes to adopt.

*Chief Justice Sewell.*—I am certainly astonished, gentlemen, at its being undisguisedly introduced as an answer to an indictment upon a specific charge of murder against an individual, or that it can for a moment be thought necessary or admissible on the defence, to exhibit an unqualified allegation of high-treason against a number of persons of whom we know nothing, and are bound to know nothing.

*Solicitor General.*—As to the evidence proposed

to be gone into, the officers of the Crown can not, from any apprehension of the effect it may have upon the case, be at all anxious to exclude it, though perhaps it might be a consideration with the Court, how far it is right to permit a witness on the part of the Crown, who is certainly under the protection of the Court, to be exposed, or made liable, to accuse himself, by his evidence in a Court of justice, of high-treason.

*Chief Justice Sewell.*—No, Mr. Solicitor, we shall certainly not permit him to do that. He is undoubtedly under the protection of the Court, and it shall be extended to him in the most ample manner. It is not for a moment to be supposed, that we will allow a witness, whom, by every obligation of duty and office, we are bound to protect, to implicate himself, by admitting that he has been guilty of high-treason. We can not for a moment think of it.

*Solicitor General.*—If my learned friend intends to contend that at the time of making this confession the prisoner was in a state of duress, let him shew it, and we know the result must be that the confession must fall through, but it is a most extraordinary and novel proposition to say, that this private war, to use my learned friend's, own expression, (though one which I candidly confess I do not fully comprehend, even after this description of an armed force,) that this private war, if it did unfortunately exist between these two companies, should be given in evidence as a reason, on an indictment for murder against an individual, against receiving a confession made by the accused. If circumstances like these are to set aside a confession, I apprehend that no confession will ever stand good. It strikes me to be a mode, as unjustifiable as it is unprecedented, to produce, by way of exonerating the prisoner from

the effects of his own confession, a vague history of what my learned friend, with that ingenuity which on all occasions distinguishes him, calls a private war, but which, if proved, the law, I believe, would denominate high-treason, and punish as such.

*Chief Justice Sewell.*—Any course of examination which has for its tendency to draw facts from captain D'Orsonnens bearing ever so remotely on the case, you may certainly pursue. One you have obtained, namely, that this witness is now a half pay captain, whether that will be of any consequence to the defence, matters not, it is a fact, and you are entitled to it. If you think proper to enquire if, at the time of making his confession, the prisoner was in a state of duress, whether legally so, or as an effect of the commission of crime in others, is at the moment of no consequence, it is a question you have a right to put, and to have answered. If you proceed to investigate the nature of the restraint it may be, I do not say that it will be so, far from it, that this witness may be not in a situation that he can be compelled to answer you any questions relative to that point. If it should in any way affect himself, he certainly may refuse to answer, and we shall protect him in his resolution. Captain D'Orsonnens tells you that he was a simple individual at the head of, or having with him a number of persons, in the service of the Earl of Selkirk. He could not be a prisoner of war, if he was a prisoner at all. You can not expect that captain D'Orsonnens shall prove that, because, if he did, it might involve himself. You astonished me by the broad unqualified way in which you spoke of the war and of captain D'Orsonnens.

*Mr. Stuart.*—I do not want captain D'Orsonnens to prove that he made this unfortunate man



a prisoner. I do not even care whether he admits that he was a prisoner, for by other witnesses, if we do not obtain it from him, we shall sufficiently prove all the particulars which I have mentioned. Indeed that this force was headed by him, and was raised and paid by the Earl of Selkirk, for the purpose of overturning his commercial rivals, is a matter of such public notoriety, that there can be no difficulty in adducing testimony to substantiate it. We complain that under the pretence of proving a confession of a crime, the witness brought forward for that purpose, shall be permitted to go into a long story, no way connected with the subject, except that it may gratify some individuals to be enabled thus to traduce those who are anxiously waiting the day, when, by vindicating themselves from the foul aspersions which have been heaped upon them, they may turn back the slanders upon their authors; but I repeat that a Court of justice ought not to be the channel through which they may, with impunity, traduce the characters of persons who have no opportunity of repelling the libels which calumniate them.

The pretended confession we do not hesitate to say we shall prove, to have been made under circumstances which preclude it from going to the jury, whether it shall be eventually submitted to them or not, we do hope that individuals out of this Court in a legal point of view, are not to be assailed in the manner this course enables a witness to attack the most honourable and innocent men; if for the present it were even admitted that his confession ought to be put on your honour's notes, it ought. I humbly contend, to be confined to that part which strictly relates to the charge laid in the indictment against him, and the witness ought not to be permitted to relate any part of

the conversation that does not immediately bear upon the question of the guilt or innocence of the prisoner.


*Mr. Gale.*—I would humbly submit to the Court that——

*Mr. Stuart and Mr. Vanfelson.*—Mr. Gale is not assuredly going to address the Court.

*Mr. Gale.*—As *Amicus Curie* I certainly must beg permission to say a few words, and conceive, it being a very customary practice, I shall be allowed to offer a few words. The impropriety of traducing characters will be freely admitted, but I think it has been but little avoided by those who complain of being attacked. As *Amicus Curie* I conceive, relative to the confession, a part certainly ought not to be received, but that, if admitted at all, it must be taken as a whole. Relative to the Earl of Selkirk having a perfect knowledge of the steps he has taken, and of the motives which actuated his conduct, I confidently affirm, that no man, disposed to act with any degree of honour, could do any other way than take the measures he did. All he has done, has been in the upright and conscientious, but fearless, execution of his duty as a magistrate. Having had the honour to be employed on various occasions as leading counsel on behalf of the Earl of Selkirk, I feel it my duty to protect his character when I hear it attacked, and more particularly as no circumstance in the case renders it at all necessary that it should be adverted to.

*Chief Justice Sewell.*—I feel it my bounden duty to interpose and beg of you, gentlemen, to let no warmth of feeling, though dictated by a sense of professional duty, added perhaps to personal esteem, lead us into forgetfulness. We also know the parties individually, and privately respect them all, but here, I know no body, God forbid

that I should. Whilst sitting here I have, in conjunction with my learned brother at my side, a duty, a serious and bounden duty to perform, that of administering, with fairness and impartiality, strict justice to all parties that enter this Court. The Crown and the prisoner in this are entitled to this strict justice from us, and, according to the light we have, each shall have it; with no other aim than securing to each party, to the public prosecution on the one hand, and to the defendant on the other, the fullest advantages afforded to them by the law, we wish this trial to take the regular and ordinary course. To the counsel on both sides we are disposed to preserve their privileges to their utmost extent. But we are strangers to each party, and earnestly desire we may not again hear of any. The charge is a charge of murder, and as such all the gentlemen know that the law provides a certain course for ascertaining the guilt or innocence of any individual accused of that crime, and I trust it will be fairly, purely, and honourably administered, without reference to any thing but the upright attainment of justice. In the various applications which have been made to the judgment of the Court, upon questions of law, whatever has been granted, either to the Crown or to the prisoner, has been given, because in our consciences we have believed them to be entitled to it. The abstract question between the Crown and the prisoner is this, has he, or has he not, been guilty of the crime of which he is accused? and every thing having a connection with that question, has a right to be brought forward, but I do not see the most remote connection, or bearing upon this abstract question, or that the state of the Indian country can furnish evidence to invalidate a confession of the crime of murder, nor can there be the least



necessity of referring to the conduct of persons not before the Court, on the one side nor on the other. I repeat to you, gentlemen, the charge is a charge of murder; that is the question, and that alone, between the Crown and the prisoner, and in ascertaining his guilt or his innocence, let the law take its course, fairly, purely, and honourably, take its regular course. It is our anxiety that it should do so, and we trust that the ends of justice, between the Crown and the prisoner, will be attained without deviating into a course that can not tend to do us any credit in the eyes of the world.

*Mr. Stuart.*—I am sorry in going into the statement required of what I intended to prove, that any thing should have fallen from me, calculated to excite a warmth of feeling, so as to call for the interference of the Court; but the life of that man is put into my hands, in conjunction with my learned friends, and I feel I can not do justice to him without proving the state of the country, as in proving that I shall exclude this pretended confession, by shewing that it was made under circumstances of restraint and fear, and therefore not entitled to be admitted as proof of the crime, but coming in the words of Macnally, page 43, "in so questionable a shape, that it must be rejected."

*Mr. Justice Bowen.* I fear I have been the innocent cause of this misunderstanding, by simply asking a question; in reply to it, difficulties have, I think, been stated that I imagine will never occur, for till you prove that he was a prisoner, you certainly can not obviate his own confession, and as yet you have not, in any shape, shewn it, on the contrary, the witness explicitly tells you he was not a prisoner. I do not see, even admitting it to have existed, that his apprehension or sup-

position, can set aside his confession, or, admitting all that has been stated to be capable of proof, that it would be a sufficient reason to justify our rejecting the confession; as one unlawful act can not be set up as a justification of another, so neither can apprehension of the consequences that might result from an illegal act, be received as a reason for rejecting it. There was a legal remedy for any illegal oppression.

*Mr. Stuart.*—It is one thing for an illegal act to be committed in the lower town of Quebec, and another, for it to be committed in the Indian territory, where there was no law but the will of the private prosecutor; in the Indian territory, where all who did not submit to his authority were treated as rebels and traitors. We know if this had been done in Quebec, the remedy was at hand, an appeal to the law would have immediately set him at liberty, but to whom, when in the power of the private prosecutor, was he to apply for redress? I am sorry to affect the feelings unnecessarily of any man, but I can not help it. In the performance of my duty to that man at the bar, no consideration of rank or consequence can for a moment restrain those observations which I feel myself compelled to make. I can not from motives of delicacy to any man, however high his rank, consent to any course that might have a tendency to sacrifice the interests of the prisoner, whose life indeed is the stake we are endeavouring to preserve. By proving the state of the country we think we shall prevent the pretended confession from going to the jury, or, should your honours permit it to go to them, that they will, in the exercise of a sound discretion, consider the circumstances under which it was obtained to be such as to warrant them in giving no credit to it. I will, with permission of the

Court proceed with my questions and I shall first ask,—

Had Fort William been captured by Lord Selkirk before you saw the prisoner De Reinhard at Fort Lac la Pluie ? and when was it so captured ?

*Captain D'Orsonnens.*—Non, mais Lord Selkirk en avoit pris possession le treize d'Août.<sup>(\*)</sup>

*Mr. Stuart's next question being to the manner in which the fort was taken possession of, the Chief Justice remarked, that he had taken down the answer of the witness, but that he now thought he ought not to keep it on his notes, that he had taken it down merely as a fact, but if Mr. Stuart intended to follow it up, and to prove how it was taken possession of, he thought, in justice to the witness, he ought to strike it out, and he should do so.*

*Mr. Stuart.*—Does your honour not consider us entitled to go into that course of examination ? I do not wish to ask this witness any question that will implicate himself by answering, but I should conceive that I have a right to prove that Fort William was captured, and I purpose to go on, and shew that it was retained forcible possession of, and from that circumstance, combined with others, that the prisoner was under that restraint which the clemency of English law deems sufficient to exclude a confession from being received as an evidence of guilt. I refer again to Macnally, rule 9th, page 43, “a confession forced from the mind by the flattery of hope, or the torture of fear, comes in so questionable a shape, when it is considered as evidence of guilt, that no credit ought to be given to it; and therefore it is rejected.”

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(\*) No, but Lord Selkirk took possession of it on the thirteenth of August.

*Chief Justice Sewell.*—If I understand, it is by an examination in the nature of one on the *voir dire* to prove that by a military or armed force, Fort William was taken possession of, and to follow up that by evidence of a similar taking of the fort of Lac la Pluie, and thence to infer, that the confession, offered on the part of the Crown, ought not to be permitted to go to the jury, because it was a confession extorted from him by the restraint which he was subject to; I apprehend that these will be found to be too remote circumstances to invalidate the confession of the prisoner; and particularly as it stands at present in evidence, that he was not a prisoner, and that possession was not taken of Fort Lac la Pluie, till after he had made it, and was so taken in consequence of information which he associated with his confession. You can, if in your power, contradict this by opposing testimony; but it stands thus at the present moment.

*Mr. Stuart.*—I must still, with great submission to the Court, contend that the doctrine on which I rely for the exclusion of this pretended confession is correct, and is sanctioned by authorities equally respectable as numerous. The rule in *Mc. Nally* which I just now submitted to the Court, is supported by *Gilbert on Evidence*, edited by *Loft*, page 137, and introduced under that head, page 43, "these rules reflect the brightest lustre on the principles of the English law, which benignly considers that the human mind, under the pressure of calamity, is easily seduced, and liable, in the alarm of danger, to acknowledge indiscriminately a falsehood or a truth as different agitations may prevail." What can be more applicable to the present case? for, if even it was contended that the circumstances ought not to have had that effect, were they not such as might easily be sup-

posed to produce the state of mind which is described as leading indiscriminately, "from the alarm of danger," to the "admission of either falsehood or truth, as different agitations prevailed." This able writer goes on to exhibit, in language equally forcible, the reason upon which this humane construction of law is founded, therefore he adds, "a confession, whether made upon an official examination, or in discourse with private persons, which is obtained from a defendant by the impression of hope or fear, however slight the emotion may be planted, is not admissible evidence. For the law will not suffer a prisoner to be made the deluded instrument of his own conviction." Having thus set forth the rule, and descanted on its propriety, he subjoins an illustration of its wisdom in these words; "the wisdom of this doctrine was fully illustrated in a case at Gloucester. Three men were tried for the murder of Mr. Harrison at Camlden, and one of them, under a promise of pardon, confessed himself guilty of the fact. The confession, therefore, was not given against him, and a few years after it appeared that Harrison was alive. [*M. S. note cited in Leache's Cr. Ca. 2d. edit. 223 ; 3d. edit. 298*]." Mr. Phillips, in his *Treatise on Evidence*, maintains the same doctrine, after stating, in sect. 5th. page 81, the weight of a voluntary confession, he describes the circumstances that are necessary to justify its admission against a prisoner. "But the confession must be voluntary, not obtained by improper influence, nor drawn from the prisoner by means of a threat or promise; for however slight the promise or threat may have been, a confession so obtained can not be received in evidence, on account of the uncertainty and doubt, whether it was not made rather from a motive of fear or of interest than from a sense of guilt."



*Chief Justice Sewell.*—Your argument is that this confession ought not to be allowed to go to the jury, because his mind was under the effect of a restraint, that exposes his confession to the objection that its sincerity is rendered suspicious. But such a supposition is founded upon a very remote contingency. To suppose remote contingencies, or remote probabilities, you are certainly not entitled. The facts, (if I may be allowed the expression,) which immediately surround the case, you are entitled to prove, whether they ought or ought not to have produced the effects which followed them, is another question, but the facts themselves you have a right to lay before the jury, because they may account satisfactorily for the effects. Thus, if you prove that the prisoner was suddenly taken possession of by a body of armed men, and by that means, under fear of consequences, was induced to make a confession, though it might not, from its being an illegal restraint, set the confession aside, to prevent it from going to the jury, yet it might form a solid ground for examination as to what degree of credit was due to it. But remote events, such as the capture of a fort at a distance of, probably, a hundred leagues, or circumstances not bearing immediately on the question which the indictment brings before the Court, I certainly consider you are not entitled to go into.

*Mr. Justice Bowen intimating his acquiescence in these opinions of his honour the Chief Justice,*

*Mr. Stuart observed,*

Then I will narrow my questions, so as to meet the decision of the Court; and commenced his examination on the *voire dire*.

*Examination, on behalf of the prisoner, on the voire dire.*

*Mr. Stuart.*—Did you go into the Indian country, or to Lac la Pluie, in a civil or military capacity, at the time you have mentioned?

*Captain D'Orsonnens.*—J'ai procédé au Lac la Pluie en Octobre 1816, comme simple individu, et non pas dans une qualité militaire.

*Mr. Stuart.*—Alliez vous seul?

*Captain D'Orsonnens.*—Non, je n'étois pas seul. J'avois des colons avec moi en charge.

*Mr. Stuart.*—Combien de personnes aviez-vous en charge?

*Captain D'Orsonnens.*—J'étois en charge de dix sept colons, hommes déchargés des régiments Glengary, Meuron, et Watteville, destinés pour la Rivière Rouge, et aussi de dix-huit Canadiens qui étoient voyageurs au service de la compagnie de la Baie d'Hudson.

*Mr. Stuart.*—La destination pour la Rivière Rouge?

*Captain D'Orsonnens.*—Oui.

*Mr. Stuart.*—Avez vous arrêté au Lac la Pluie, et pourquoi?

*Captain D'Orsonnens.*—Nous avons arrêté ensuite au Lac la Pluie, en conséquence de l'information que j'ai reçue de De Reinhard du danger qui nous attendoit à la Rivière Winnipic.

*Mr. Stuart.*—Ces colons ont ils tous été armés, et avec fusils de chasse, ou fusils Américains?

*Captain D'Orsonnens.*—Oui. Tous les colons étoient armés de fusils, quelques-uns des fusils à la chasse, et d'autres, des petits fusils Américains.

*Mr. Stuart.*—Les Canadiens aussi?

*Captain D'Orsonnens.*—Non, les Canadiens n'étoient pas armés.

*Mr. Stuart.*—Et comme vous vous proposiez de vous rendre à la Rivière Rouge, vous n'aviez pas l'intention de prendre le Fort du Lac la Pluie ?

*Captain D'Orsonnens.*—Mes ordres étoient de me rendre à la Rivière Rouge si je pouvois, et si non, de bâtir une maison au Portage du Lac la Pluie. Assurément, je n'avois aucune intention, ni aucun ordre, de quoi que ce soit, de prendre le Fort du Lac la Pluie. Si je n'avois pas les moyens d'aller à la Rivière Rouge, j'ai entendu de bâtir une maison au Portage du Lac la Pluie.

*Mr. Stuart.*—Et vous vous considérez un individu simple, sans aucun commandement ou autorité militaire ?

*Captain D'Orsonnens.*—J'étois un individu simple. Je n'étois pas là avec aucun commandement militaire quelconque.

*Mr. Stuart.*—Vous souvenez-vous d'avoir donné des ordres comme capitaine ?

*Captain D'Orsonnens.*—Non, monsieur, je ne me rappelle pas d'avoir donné aucun ordre à qui que ce soit, qu'à mes colons et Canadiens.

*Mr. Stuart.*—Vous n'avez pas donné aucun ordre excepté aux colons, et non pas comme la tête de l'avant-garde d'une armée ?

*Captain D'Orsonnens.*—Je n'y étois pas comme la tête de l'avant-garde d'une armée; point de tout. J'étois la tête d'un parti de voyageurs au service de la Baie d'Hudson, et il n'y avoit point d'ordre donné par moi, qu'à mes colons et voyageurs, excepté un donné à monsieur Dease, et cela de son consentement.

*Mr. Stuart.*—A quel tems, et comment, l'avez vous fait alors ?

*Captain D'Orsonnens.*—J'ai représenté à monsieur Dease le danger où nous serions exposés, si les Métifs venoient, et j'ai demandé qu'il nous logeroit dans le fort, offrant en même tems de lui

payer un loyer même. Il m'a refusé, disant que ce n'étoit pas possible, et alors j'ai demandé, comme une mesure de précaution, qu'il me donnât les armes et ammunitions. L'exigence de l'affaire m'obligeoit de faire cette demande, et je l'ai ainsi représenté à monsieur Dease. Monsieur Dease me donna les armes et ammunitions, et j'ai dressé un reçu pour, dans les termes qu'il m'a dictés pour sa justification.

*Mr. Stuart.*—Le reçu, comment l'avez vous signé ?

*Captain D'Orsonnens.*—Je l'ai signé "capitaine D'Orsonnens, commandant l'avant-garde des voyageurs de la Baie d'Hudson."<sup>(\*)</sup>

<sup>(\*)</sup> *C. D'O.*—I proceeded to Lake la Pluie in October 1816, as a simple individual, and not in a military capacity.

*Mr. S.*—Did you go alone ?

*C. D'O.*—No, I was not alone. I had the charge of some colonists.

*Mr. S.*—How many persons were there under your charge ?

*C. D'O.*—I was in charge of seventeen colonists, discharged men of the regiments of Glengary, Meuron, and Watteville, destined for Red River, and also eighteen Canadians, who were voyageurs in the service of the Hudson's Bay.

*Mr. S.*—Their destination was Red River ?

*C. D'O.*—Yes.

*Mr. S.*—Did you stop at Lake la Pluie, and why ?

*C. D'O.*—We afterwards stopped at Lake la Pluie, in consequence of the information which I had received from De Reinhard, of the danger which awaited us in the River Winnipeg.

*Mr. S.*—These colonists, were they all armed, and was it with hunting guns, or with American guns they were armed ?

*C. D'O.*—Yes, all the colonists were armed with guns, some with hunting guns, and some with small American guns.

*Mr. S.*—The Canadians too ?

*C. D'O.*—No, the Canadians were not armed.

*Mr. S.*—And as it was your intention to proceed to Red River, you had no intention of taking the fort at Lake la Pluie ?

*C. D'O.*—My orders were, to proceed to Red River if I could, and if not, to build a house at the Portage of Lake la Pluie. Assuredly I had not any intention of taking the fort of Lake la Pluie. If I had not the means of reaching Red River,

*Attorney-General.*—I really do not see what this has to do with an examination on the *voire dire*; it might, in the latitude allowed in cross examination, perhaps be admitted, but certainly can have no reference to those points for which an examination on the *voire dire*, is permitted to be gone into.

*Mr. Stuart.*—I beg to differ with the learned Attorney-General, and to contend, that I am pursuing exactly the course that I am entitled to do, and I have arrived, I think, at the point I set out for,

I understood I was to build a house at the Portage of Lake la Pluie.

*Mr. S.*—And you considered yourself as a simple individual, without any military command or authority?

*C. D'O.*—I was a simple individual. I was not there with any military command whatever.

*Mr. S.*—Do you recollect having issued any orders as captain?

*C. D'O.*—No, Sir, I do not remember having giving any orders, to any one whomsoever, excepting to my colonists and Canadians.

*Mr. S.*—You did not give any order excepting to the colonists? not any as the chief of the advanced guard of an army.

*C. D'O.*—I was not there as the chief of the advanced guard of any army, not at all; I was the chief of a party of voyageurs, in the Hudson's Bay service, and there was no order issued by me but to my colonists and voyageurs, excepting one directed to Mr. Dease, and that was with his own consent.

*Mr. S.*—At what time, and how, did you issue that then?

*C. D'O.*—I represented to Mr. Dease the danger to which we should be exposed, if the *Métifs* came, and I demanded of him to lodge us in the fort, offering at the same time even to pay him a rent. He refused me, saying that it was impossible, and I then, as a measure of precaution, demanded the arms and ammunition from him. The exigency of the circumstances obliged me to make this demand, and I represented it in that way to Mr. Dease. Mr. Dease delivered the arms and ammunition to me, and I drew up a receipt for them, in the terms which he dictated to me, for his justification.

*Mr. S.*—This receipt; how did you sign it?

*C. D'O.*—I signed it, "captain D'Orsonnens, commanding the advanced guard of Hudson's Bay voyageurs."

which was to prove that De Reinhard made this pretended confession in a state of actual duress. I think I have, without deviating at all from the rules under which the examination on the *voir dire* should be carried on, nearly shut out this pretended confession, by shewing by this witness that he was under a constraint, and that of the most arbitrary kind.

*Attorney-General.*—I believe, however, that all this has no reference whatever to the confession, but took place some days after that it had been made, and was actually in consequence of information given by the prisoner at the time he made his confession. Was not that the case captain D'Orsonnens?

*Captain D'Orsonnens.*—Oui, ces armes étoient reçues de monsieur Dease après la déclaration de De Reinhard. La déclaration de De Reinhard a été faite le troisième d'Octobre, et j'ai reçu les armes le sixième; et je les ai demandées en conséquence de l'information que j'ai eue de lui.

*Mr. Stuart.*—Comment avez-vous signé le reçu? <sup>(97)</sup>

*Chief Justice Sewell.*—It turns out to be of no consequence how it was signed, for it was three days after, and could not therefore possibly influence his confession.

*Mr. Stuart.*—His answer might perhaps affect his credibility when we come to cross examine the witness, as we shall, I think, then shew that all this resulted from the open private war of which I have spoken, and which I shall then demon-

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(97) C. D'O.—Yes; these arms were received from Mr. Dease after De Reinhard's declaration. De Reinhard's declaration was made on the third of October, and I received the arms on the sixth; and it was in consequence of the information I got from him, that I demanded them.

*Mr. S.*—How did you sign the receipt?



strate to have existed between these commercial rivals.

*Examination resumed by the Attorney-General.*

*Captain D'Orsonnens.*—Quand j'ai eu la conversation avec De Reinhard, il a bien compris que j'étois là comme particulier simple. Il n'étoit pas prisonnier alors, et je lui ai expliqué combien j'étois fâché de me trouver dans ces difficultés. Avant sa déclaration, il savoit bien que je n'étois que l'individu simple. Il m'a dit qu'il a été envoyé par monsieur Archibald Norman M'Leod en qualité de connétable, muni d'un warrant, pour arrêter un nommé Owen Kevény qui avoit maltraité ses gens qui avoient déserté, et s'étoient plaints à monsieur M'Leod, (c'est-à-dire les gens du bateau de Kevény, à ce que j'ai compris,) et qu'il l'avoit fait prisonnier, et l'avoit amené au Bas de la Rivière. Que quelques jours après, un conseil a été tenu, où se trouvoient monsieur Alexander M'Donell, monsieur Archibald M'Lellan, Joseph Cadotte, Cuthbert Grant, et plusieurs autres Métifs dont j'ai oublié les noms. A ce conseil, De Reinhard m'a dit qu'il étoit présent ; non pas un du conseil, mais qu'il étoit présent, et que dans ce conseil il a été résolu que Kevény étoit un homme de trop grande conséquence, et qu'il falloit le tuer, mais qu'il falloit faire attention de ne pas le tuer parmi les Sauvages, et qu'en conséquence on l'avoit envoyé au Lac la Pluie dans un canot. Qu'à force des sollicitations d'un nommé Mainville, qui avoit consenti de le tuer, lui (De Reinhard,) a consenti de surveiller à ce que Mainville le fît ; et qu'arrivés à un endroit appelé les Dalles dans la Rivière Winnipic, Kevény demandoit de descendre à terre, ce qu'étoit accordé par De Reinhard. Qu'alors que Kevény revenoit

pour se r'embarquer, il (De Reinhard,) a dit que c'étoit le bon moment, que Mainville aussitôt lâcha un coup de fusil, qui frappa Keveny et le blessa avec la balle mortellement à la gorge; et que par acte d'humanité, voyant qu'il ne pouvoit pas vivre, il a passé son sabre deux fois au travers de son corps pour l'empêcher de souffrir, et que d'après tout ce qu'il avoit entendu de ses bourgeois, il croyoit faire un acte méritoire, quand même il l'auroit tué, parcequ'il considéroit les Anglois, ou gens de la Rivière Rouge, comme les ennemis de son gouvernement, et qu'il auroit fait la même chose à tout autre Anglois que Keveny : ayant entendu à un conseil de guerre, quelque tems auparavant, qu'on sollicitoit les Sauvages d'aller faire la guerre aux colons et les Anglois de la Rivière Rouge, qu'on considéroit comme des ennemis du gouvernement, et aussi par les représentations de monsieur M'Leod. Je ne sais pas qu'une déclaration écrite a été faite par De Reinhard. Je n'étois pas magistrat, et je n'ai pas pris la déclaration par écrit, et je n'ai pas connoissance que sa déclaration ait été prise par aucun magistrat, ou aucunement, par écrit.<sup>(\*)</sup>

(\*) When I held the conversation with De Reinhard, he well knew that I was there as a simple individual. He was not then a prisoner, and I explained to him how much I was vexed to find myself in such difficulties. He knew, before making his declaration, that I was only a simple individual. He told me that he had been sent by Mr. Archibald Norman M'Leod, in the capacity of constable, and provided with a warrant, to arrest one Owen Keveny, who had ill treated his people, who had deserted, and had made a complaint to Mr. M'Leod, (that is to say, the crew of Keveny's boat, as I understood,) and that he had taken him prisoner, and had carried him to Bas de la Rivière. That some days afterwards a council was held, at which were present, Mr. Alexander M'Donell, Mr. Archibald M'Lellan, Joseph Cadotte, Cuthbert Grant, and several other *Métifs*, whose names I have forgotten. De Reinhard told me he was present at this council; not as one of the council, but that



I am a half pay captain of His Majesty's De Meuron regiment. Je n'ai pas reçu de paie de qui que ce soit, depuis que le regiment a été réformé, que de sa Majesté. J'ai en outre mes rentes ou propres revenus, qui sont payés par les Suisses. Je n'ai jamais reçu d'argent de Milord Selkirk, ni de ses agents. De Reinhard m'a fait la description de Keveny qu'il m'a dit étoit un beau jeune homme, grand, avec des cheveux blonds, tirans sur le rouge. Il m'a dit aussi ce qu'ils ont fait avec le corps de monsieur Keveny; qu'ils l'avoient traîné quelque distance sur la grève et qu'on l'avoit laissé là. Qu'ils avoient pris ses effets, et qu'il avoit donné une partie aux uns et

he was present, and that at this council it was resolved that Keveny was a man of too great consequence, and that he ought to be killed, but that care ought to be taken that he was not killed among the Indians, and that he had, in consequence, been sent in a canoe to Lake la Pluie. That by dint of the solicitations of a man named Mainville, who had consented to kill him, he (De Reinhard,) agreed to see that Mainville did do it; and that, being come to a place called the Dalles, in the River Winnipic, Keveny required to go on shore, which De Reinhard granted. That when Keveny came back in order to re-embark, he (De Reinhard,) had said that it was the proper time, that Mainville immediately discharged his gun, and hit Keveny, and the ball mortally wounded him in the neck, and that, as an act of humanity, seeing that he could not live, he had run his sword twice through his body, in order to prevent him from suffering, and that according to all he had heard from his masters, (bourgeois,) he was in the belief that he had done a meritorious act, even had he killed him himself, because he considered the English, or the Red-River people, as the enemies of his government, and that he would have done the same to any other Englishman besides Keveny, having, at a council of war some time before, heard the Indians solicited to make war upon the colonists, and the English of Red River, who were considered as enemies to government; and likewise by the representations of Mr. M'Leod. I do not know that a written declaration was made by De Reinhard. I was not a magistrate, and I did not take the declaration in writing, and I have no knowledge that his declaration was taken by any magistrate, or any how, in writing.

une partie aux autres, et qu'il avoit gardé une partie lui même, et parmi, son *writing desk*. Il m'a dit qu'il le considéroit très certainement mort, puisqu'il a dit qu'il étoit blessé mortellement, et que c'étoit pour l'épargner quelques momens de souffrance qu'il l'avoit passé l'épée dans le corps. Il m'a dit qu'ils l'avoient deshabillé, qu'on avoit pris toutes ses hardes, jusqu'à sa chemise, et qu'on avoit laissé le corps tout nu.

*Attorney-General*.—A-t-il dit, le corps de monsieur Keveny ?

*Captain D'Orsonnens*.—Je ne me rappelle pas lequel il a dit, le corps, ou monsieur Keveny. C'étoit le troisième d'Octobre qu'il m'a fait cette déclaration, et il m'a dit que ceci étoit arrivé en Septembre alors passé, et il a nommé le jour dont je ne me rappelle plus à présent. (")

(") C. D'O.—I have not received any pay, from any person whatsoever, since the regiment has been disbanded, except from His Majesty. I have besides my rents, my own income, which are paid to me by the Swiss. I never received any money from My Lord Selkirk, nor from his agents. De Reinhard described Keveny to me, who, he said, was a handsome young man, tall, with light hair, inclining to red. He likewise told me what they had done with Keveny's body; that they had dragged it some distance along the beach, and that it had been left there. That they had taken his effects, and that he had given a part to some, and a part to others, and that he had kept a part himself, and amongst them, his writing-desk. He told me that he looked upon him as most certainly dead, for he said that he was mortally wounded, and that it was in order to save him a few moments of pain that he had run his sword through his body. He told me that they had stripped him, that all his clothes were taken, even to his shirt, and that his body had been left quite naked.

A. G.—Did he say the body of Mr. Keveny ?

C. D'O.—I do not recollect which he said, the body, or Mr. Keveny. It was on the third of October that he made this declaration to me, and he told me that this had happened in September, then past; and he named the day, but which I do not now recollect.

*Cross examination conducted by Mr. Stuart.*

*Captain D'Orsonnens.* — J'ai été ci-devant capitaine dans le régiment De Meuron, et le prisonnier — Je suis parti de Montréal le vingt-septième de Mai 1816, avec huit hommes, ci-devant des Meurons, engagés comme voyageurs jusqu'à Kingston, mais avec permission de procéder et s'établir à la Rivière Rouge s'ils le vouloient, et aussi il y avoit quatorze ou seize ou plus d'hommes ci-devant des Watteviles. A Kingston le capitaine Matthey, monsieur Graffenreith, et le lieutenant Fauche, nous ont joint, avec cinquante ou soixante hommes, et au tems que nous sommes rendus à Fort William, le tout pouvoit se monter à quatre-vingt ou quatre-vingt-dix hommes. Le Fort William étoit occupé par Milord Selkirk et ses gens, dans le tems que j'ai eu la conversation avec le prisonnier déjà mentionnée. Tous ces hommes, les vingt-quatre avec moi premièrement, et les autres, étoient engagés sous la direction, et au nom de Milord Selkirk, et de la Compagnie de la Baie d'Hudson, pour faire le voyage à la Rivière Rouge et prendre des terres là s'ils les vouloient, ou si non, de retourner en Europe par la Baie d'Hudson. Le capitaine Matthey étoit sous la direction de Milord Selkirk. Je n'ai jamais reçu d'argent de Milord Selkirk, ni de la Compagnie de la Baie d'Hudson, et je n'entends pas en recevoir. Ces hommes étoient armés, en partie. La plus grande partie étoit armée. Nous avons passé par le Fort William en allant à la Rivière Rouge. Nous avions des canons, mais non pas montés, ni aucune — Ils étoient destinés pour la Rivière Rouge, pour la défense de cette colonie, et, comme j'ai croyance, pour remplacer d'autres canons qu'on avoit emportés de la Rivière Rouge, ou qui avoient été volés de

la colonie l'année auparavant, à ce que j'ai entendu. Je n'avois pas de connoissance actuelle que ces canons étoient volés, mais je le crois.<sup>(100)</sup>

*Mr. Stuart.*—This very answer demonstrates, I should humbly submit, the necessity there exists, for the attainment of justice in this case, that we should be permitted to go into evidence of the general state of the country, for I do most sincerely consider that, if I am not allowed to do so, the prisoner is deprived of his principal ground of defence. I have no wish to enquire whether My Lord Selkirk was right in taking possession of Fort William with an armed force, or whether he was justified in pushing his conquest to fort Lac la

<sup>(100)</sup> *C. D'O.*—I was formerly captain in the regiment of Meuron, and the prisoner ——. I left Montreal on the twenty-seventh of May, 1816, with eight men, formerly Meurons, engaged as voyageurs to Kingston, but with permission to proceed and establish themselves at Red River, if they chose it, and there were also fourteen or sixteen, or more, men, formerly Wattleilles. At Kingston we were joined by captain Matthey, Mr. Graffenreith, and lieutenant Fauche, with fifty or sixty men, and at the time we went to Fort William, the whole number might amount to eighty or ninety men. Fort William was in the occupation of My Lord Selkirk and his people, at the time I had the conversation with the prisoner already mentioned. All these men, the twenty-four who were with me in the first instance, and the others, were engaged under the direction, and in the name of My Lord Selkirk, and of the Hudson's Bay Company, to undertake the voyage to Red River, and to take lands there, if they desired it, or if not, to return to Europe by Hudson's Bay. Captain Matthey was under the command of My Lord Selkirk. I never received any money from My Lord Selkirk, nor from the Hudson's Bay Company, and I do not mean to receive any. These men were partly armed. The greatest part of them were armed. We passed by way of Fort William in going to Red River. We had cannon, but not mounted nor any. They were intended for Red River, for the defence of that colony, and, as I believe, to replace other cannon, which had been stolen from the colony the year before, according to what I heard. I had no actual knowledge that these cannon were stolen, but I believe it.

Pluie. I have no wish to ask whether this witness was not a part of that armed force at both places, or whether he was not at the head of that division of this army which took the fort where De Reinhard was, and whether the whole of them were or were not in the employ and pay of the private prosecutor in this case. I do not want to mention the name of Lord Selkirk in the examination; it is from forgetfulness, or some other cause, when I do it, but I do humbly contend that every thing material to the defence ought to be admitted, and we consider this as the most essential part of it, that we should be allowed to shew the general state of this unfortunate country, torn to pieces by a war, emanating from a great commercial rivalry, and bounded only by the interest or ambition of those engaged in the conflict, from the peculiar situation of that country, involving personally in its consequences all who from any circumstance were found within its wide and extended range. Let us for a moment look at the situation of this country, and in observing the peculiarity of all the circumstances which surround it, we shall instantly, I think, discover the absolute necessity that there is, for the defence of the prisoner, that he should be thus privileged. Different indeed, widely different, is that immense wilderness to a civilized country; an immense territory, known indeed in part only to the fur traders, in possession of the aborigines, the native lords of the soil, tracked only by the hunters in pursuit of the beaver, with no habitation but the cabin of the Indian, except the posts which commercial enterprise has established for the purpose of carrying on a trade which has most unfortunately occasioned the whole of the disasters which we have to deplore, and from which the present case indubitably springs. Very different indeed is such a country to that of a city like Que-

bec, where if a man is accused, he has the protection of the law for his security in the investigation into his conduct, which accusation necessarily produces. Widely different is a confession made in a territory remote from every thing like the semblance of magistracy or judicial authority, where to be accused was to be convicted; nay to be suspected only, was to be exposed to punishment.—Widely different, I say, is a confession made in that country, where, by the only avenue to the protection which the law affords being in the hands of the enemies of this man—*his* enemies because they were at war with his *employers*—it was therefore closed against him; different indeed is a confession thus made to one made in our police office, where it may be reasonably esteemed the disburdening a conscience troubled by a sense of guilt, there, it may be only a self-accusation, under the hope of some advantage. With the case of Harrison before us, we are warned against the effects which a fear of suffering may create, even under the mild administration of the law by English judges, how much more then ought we to hesitate before we admit a confession to have been freely made, without a hope of advantage, or fear of consequences of not making it, when, if allowed to prove the general state of the country, I should demonstrate that perhaps self-accusation in association with others, was his only security for the preservation of life. For myself I do say that nothing, after what I have witnessed of the lawless violence practiced in this unhappy country, can excite my astonishment. In discharge of the imperious and painful duty confided to us, there is nothing that we consider important, that I do not feel myself compelled to insist upon. The preservation of the interests, nay the life, of that man is entrusted to our hands, and from no motive of deli-

cacy to any individual, let his rank be ever so high or elevated, will we consent to sacrifice the one, or endanger the other. In the discharge of professional duty, I dare not, whilst as a man I should scorn it. He was completely within the power of his enemies who had possession of the only outlet from this territory, and the very individual brought forward to prove a confession pretended to have been freely and voluntarily made, was himself at the head of the military operations which led to this situation of affairs.

*Chief Justice Sewell.*—I can not see what effect this can have upon the case as it stands. How, for instance, supposing every thing you say to be capable of the most convincing proof, can it alter what was done subsequent to the confession? or what effect can it have upon a council held at a distance of some hundred leagues from either place, at which it was resolved, according to his own confession, that it was absolutely necessary to kill him. I should be sorry to prevent any thing being adduced in defence of this unfortunate man, but there must be shewn a connection between the charge and evidence, which, *primâ facie*, does not appear to have the least bearing upon the case, before we can admit it; for supposing that you substantiate the whole, does the state of the country alter or justify a deliberate murder?

*Mr. Stuart.*—I am really surprised that the Court do not see the point of argument. I am not arguing upon any circumstances which I particularly specify, they have been only mentioned by way of example of matters of public notoriety, but the point I have the honour to submit to the Court is, that this confession, or rather pretended confession, ought to go for nothing, as it was made at the time that he was in the possession of an armed force, and to substantiate that fact I wish

to go into the state of the country generally, as, if permitted, I shall then shew that he was, although apparently free, as actually a prisoner as if confined within the four walls of the common gaol.

*Mr. Justice Bowen.*—You wish to prove that at the time of making this confession, De Reinhard was a prisoner, that, although apparently as free as air, he was virtually a prisoner, because at any moment, from being, according to your statement, in the hands of his enemies, without the possibility of escape, he might have actually been made one. You strengthen this statement by adding that, from the inveteracy existing between these commercial rivals, such was the deplorable situation of any person in that country attached to the weaker party, that the consequence of telling the truth, if in opposition to the interests or wishes of the stronger, might be a dungeon, or perhaps death; you add, that the prisoner was in the service of that party, and falling into the hands of the enemies of his employers, under the influence of fear, and suffering a virtual, though not an apparent, restraint, he, from motives of personal safety, or from a desire of self preservation, made a confession, which from the reasons you have assigned, you contend ought not to be admitted in evidence. You propose to substantiate the correctness of the statement by investigating the general state of the country, as calculated to justify the inference you have drawn, that the restraint led to this conduct of the prisoner. That is the way in which I understand your argument, and I believe I have stated it as you have laid it before us. The circumstances of the country generally, (although undoubtedly of a very peculiar nature and deeply to be regretted,) appear to me to be too remote a cause from which



to infer that a man would not only confess himself a participator in offences, but also accuse himself of murder. I fully agree with the opinions delivered by my learned brother the Chief Justice, previous to the examination on the *voire dire*, that the circumstances were too remote, as they appear at present, to prevent the confession being received and submitted to the jury.

*Mr. Stuart.*—I am rather glad of the decision of the Court, as it will afford me an opportunity of putting the questions which I purposed, and of having a formal objection made to them, and by that means I shall obtain a solemn decision of the Court. To me it is a matter of complete indifference which way the circumstance is introduced to the attention of the Court, but after its opinion intimated just now, I shall only as a matter of fact, I presume, be permitted to shew that Fort William was taken possession of by an armed force; that Lac la Pluie fort was also taken possession of by one, a smaller one certainly, but in co-operation with, and indeed a part of the larger one, and that at this time it was known to the prisoner that Fort William, the only outlet from that territory, was in possession of the Earl of Selkirk, or the Hudson's Bay Company, having been taken forcible possession of. I also shall prove that previous to the confession, the fort of Lac la Pluie had been taken possession of by captain D'Orsonnens, for, if I establish the fact that Fort William being taken was in the knowledge of the prisoner, I consider that the *res gesta* of the affair is settled, for the influence upon his mind must necessarily have been stronger when he witnessed a small division of that force, a detachment from the main body, "une avant-garde d'un corps d'armée," detached from the same body, to pursue the same course at fort of Lac la Pluie, which had

previously put them into possession of Fort William, and in point of fact the moment they took possession of Fort William, I consider, (as was really the case,) that they had a complete command of the country, and all who were within its boundaries were completely amenable and subject to their will, to which any opposition was completely unavailing, as it must be nugatory. These facts, I presume, I shall be permitted to prove; it will then be for the jury to infer, as shall to their judgements appear right. To attain this I purpose putting simply one or two questions which, if the Crown officers object to, I trust we shall be able to satisfy the Court, are questions essential to our defence, and such as we are entitled to put. My question will be, whether Fort William was not taken possession of, or captured, by persons in the service of the Hudson's Bay Company, previous to the pretended confession of De Reinhard at the fort of Lac la Pluie, and that to De Reinhard's knowledge; and also whether the fort of Lac la Pluie was not also taken by persons in the service of the Hudson's Bay Company previous to the said confession.

*[The Attorney-General intimating that he objected to the questions, the Court was ordered to be adjourned till Monday, the 25th May, at eight o'clock, A. M.]*

*Monday, 25th May, 1818.*

COURT PRESENT AS ON SATURDAY.

*The jury were called, and being present, the Court desired the gentlemen to take up the argument.*

*Attorney-General.*—My sole object in making the objection to the question is to save the time of the

Court inasmuch as no answer that the witness can give to these questions can be evidence:

*Chief Justice Sewell.*—We had better hear Mr. Stuart in the affirmative, and then you can reply to him.

*Attorney-General.*—The more regular way, I believe, is that which I have taken, of objecting to the question being put. The question comes from them, and we object, and are heard on our opposition, and Mr. Stuart will be heard in reply to us.

*Mr. Stuart.*—I wish to state the grounds on which I conceive myself entitled to put these questions, and briefly to shew the bearing they will have on the case; and, unless permitted to do so, as the learned gentleman can not know the purpose for which they were put, I do not see what he has got to reply to.

*Attorney-General.*—I object to the questions being put at all, and I think the motive for putting them is sufficiently apparent from the questions themselves. The questions proposed are whether Fort William was not captured by persons in the service of the Hudson's Bay Company, previous to the confession of the prisoner, and that to his knowledge, and also, whether the fort of Lac la Pluie was not also taken by persons in the service of the Hudson's Bay Company, previous to the said confession. If it was so even, it would not, in point of law, invalidate this confession, for there are only two circumstances which can destroy the evidence of a confession, namely, that promises, or menaces, were made use of to obtain it. Now a mere knowledge of the fact that Fort William had been taken can not certainly operate either as the one or the other. I humbly contend, and consider it unnecessary to detain the Court to support the proposition by argument, that nothing but a promise of reward or advantage, or a menace of pu-

nishment, is sufficient to destroy a confession; and, however, for a moment admitting it to be a fact, that the fort was taken and kept possession of, in the manner stated by my learned friend, yet that it is not exactly apparent how such a circumstance is to operate to preclude a confession being good evidence. I submit two points only have that power, namely, that promises, or menaces, were resorted to to obtain it.

*Solicitor General.*—I shall make my objections more general than my learned friend the Attorney-General has done, but I hope, without trespassing upon the time of the Court long, that I shall do away, or cut down, a long chain of testimony which I perceive my learned friends are desirous to introduce, and as I think I shall be able to satisfy your honours, that it is no way relevant, I trust it will be occupying a few minutes in a way that may hereafter save hours. The proposition appears to me to branch itself into two questions: 1st. Whether the prisoner was actually in a state of confinement, in a state of actual imprisonment, at the time of making the confession, and necessarily under fear; or, 2d. Whether, from the state of the country, owing to a system of unlawful warfare, he was under constructive restraint, and from that circumstance, under the impulse of fear, so that it operated to extort from him a confession. In proof of the existence of this unlawful warfare, it is proposed to prove that Fort William was taken. But my learned friends do not propose to prove this as an isolated fact, it is intended only to form the introduction, or ground work, to a long chain of testimony, of which, to use my learned friends own words, this is the *res gesta*. I therefore oppose the admission of the introductory testimony though it is a fact, because it is a fact no way bearing upon the case, and intended only to pave the way to

a history that will consume a great deal of our time, and all to no end, because it can not be proved to bear at all upon the charge against the prisoner, for he stands at the bar to answer to a charge of murder.—The points for your honours consideration, I consider to be two—whether the prisoner was in absolute custody, and therefore in fear, and 2ndly, if not in actual confinement, was the state of the country such, that a constructive restraint operated on his mind to such an extent, as to induce a fear that shall be considered as an adequate reason for rejecting this testimony. With respect to the first, what does captain D'Orsonnens say? He answers positively that he was *not*, that the fort of Lac la Pluie was not taken possession of, at least that it was not at that time, but that in point of fact, the prisoner was as free as I am at this moment; but, if he had been in custody, I contend that it would not be sufficient to invalidate the confession made. Do we not daily see confessions made by persons in custody? Confessions made in our police-office by persons with a constable at their elbow? but is that ever adduced as an evidence against the validity of the confession? most certainly not. This part of the subject I consider to be completely answered, and that the objection must fail. Under that part of the objection, which is founded on the unfortunate state of the country, the doctrine of my learned friend, the Attorney-General, I consider to be perfectly correct, that it is only a direct promise, or a threat, that can destroy a confession, and I perfectly agree with that opinion, and consider it as unanswerable in law. I might perhaps be disposed to admit that, if by legal or illegal restraint, a confession was extorted; though no direct promise or menace was apparent, that it might perhaps be a subject of fair consideration to go to the jury, for them to say

whether or not the confession had been made under circumstances of imprisonment or restraint that entitled it to no credit. I might, but I do not know whether in admitting even this, indeed I am not confident that I do not go too far, as an officer of the Crown, in so doing, but it can not, however, apply to the present case, for there are no such circumstances about it; the evidence goes directly to contradict it, for captain D'Orsonnens says expressly, that he was not in confinement or duress of any kind. If any thing of the kind did exist, it must be most distinctly shewn, and it is incumbent on the prisoner most distinctly to shew the circumstances to be of a nature so strong, that they actually led him to accuse himself of crime, to escape from the dangers with which he was surrounded, and which threatened to destroy him.— But the circumstance of restraint alone, could it be admitted of have existed, is not of itself sufficient to object to a confession. Your honours will recollect a case much stronger than any that have been hinted at here, which existed not long ago in England, that of restraint by an imposing military force, which the intemperance of persons rendered it necessary, by way of precaution, to employ. In that state of things, a man who was suspected was immediately whipped off by a party of dragoons, examined before a magistrate, or the secretary of state, or the privy council, and his examinations made evidence against him on his trial. I am aware that it may be objected that this was a *legal*, though an imposing force, and that any confession made under its fear, was admissible—because it was created by a legal body opposing an illegal force. But you honours will see immediately that this argument tells just the other way, for he had no right to suppose that he would be confined if he did not confess. He was not invited even to confess. If a

defendant is permitted to say that he made a confession because he was afraid of going to jail, I am apprehensive we shall never have a confession read. What is the common practice in London? A man commits some offence, a nocturnal one for instance, he is taken up, carried to a watch-house, or lodged in the compter, if the circumstance occurs in the city, till the morning, when he is taken before a magistrate, or the sitting alderman, as the case may be. Having been for some time before, and then remaining under restraint from the custody of the law, he confesses from some motive or other, perhaps, if others have been concerned in the infraction of the law, from a hope of being received as a King's evidence; he confesses his guilt. On his trial his own confession is produced against him. No doubt, having misled himself in his expectation of being received as a King's evidence, he would be glad, on his trial at the Old Bailey, when his confession was produced in evidence against him, he would wish to be permitted to object to its being received, and would assign, as my learned friends do on the present occasion, that at the time of making it he was in a state of duress, and was afraid of the consequences, or in other words was afraid he would be sent to jail. But we all know that would not prevent the confession being received, he must, to prevent it, shew, and most distinctly shew too, that he was not only in duress, but that his imprisonment was used to screw out of him a confession. Neither can the prisoner at the bar be allowed, on the other hand, to plead that he thought it might be to his *advantage* to confess, and that *therefore* he made his confession. The answer to that is, if he did think so, he has thought erroneously, and his erroneous conclusion can not invalidate a substantial confession. In answer to that part of the argument we have

before heard relative to the nature of the duress under which the prisoner alleges he suffered, and the operation of it on his mind, we make the same observation, that, if even true, it furnishes no objection to the reception of his confession. It is merely an erroneous conclusion of his own mind, and we add further, that as there is always redress for an illegal act, it is quite impossible that he can be permitted to offer that he was apprehensive of his personal safety at the time of making it, and that therefore, the confession ought to be set aside. His thoughts as to the consequences of what, if it existed, was an illegal restraint, can not certainly exclude the testimony we offer as to his confession. But it is in fact needless to argue on that head, seeing that at the time of making the confession, he was as free as any of us at present in this Court. For these reasons, we think it wrong that our learned friends should be allowed to go into proof of what, in their own words, is denominated a private warfare, because, supposing indeed that they proved its existence, it could not, for many, very many, reasons, and among them, for those I have had the honour to submit to the Court, be received, either in justification of the act charged against the prisoner at the bar, for which purpose indeed I am confident my learned friends would not think of presenting it, neither, as I submit to the Court, can it be received, to invalidate the testimony of the prisoner's confession, which we have already laid before the Court, and which we propose, if permitted by your honours, to strengthen by various other witnesses. I think it unnecessary to offer additional arguments, indeed I ought to apologise to your honours for the length at which I have occupied the time of the Court.

*Mr. Stuart.*—The question now in argument before the Court, is one of infinite importance to the



prisoner, being in effect no less than whether he is to be permitted to exhibit a defence or not. If not permitted, either by cross examination of the witnesses on the part of the Crown, or by the testimony of those we have to produce on the defence, to bring before the Court and the jury the situation of the country denominated the Indian Territory, he is, in point of fact, excluded from his principal defence; and what period is so proper as the moment when a pretended confession is attempted, (a confession which, if ever made, was extorted by the dread which might very naturally be expected to result from the unprecedented state of the country,) to be introduced as evidence against the prisoner? I ask what time is so proper as this moment to bring before the Court and jury, those circumstances which, if the confession ever should have been made as related by the witness now under examination, would immediately shut it out as completely inadmissible evidence against him. Owing to these circumstances producing a constraint incompatible with that freedom which the wisdom and humanity of the law, unite in declaring absolutely necessary and indispensable to the validity of a confession. In producing these circumstances it is impossible not to touch upon the subject of those difficulties which unfortunately existed between the Hudson's Bay Company and the Earl of Selkirk, on the one hand, and the North-West Company, on the other. In so doing, however, I shall most studiously avoid introducing any thing calculated to excite the feelings of any person, and shall refrain from even mentioning the name of the private prosecutor, or any other persons who may be supposed to be interested on the other side of the question, excepting when, in detailing matters of public notoriety, it is completely unavoidable. It is a mat-

ter of public notoriety, which it is indispensably requisite that I be permitted to prove, and I intend to do so by this witness, that an armed force, under the orders, and in the pay, of the Earl Selkirk, took possession of Fort William by force. I do not want the witness to acknowledge that he was at the head of that force, as I shall prove it by other testimony. All I shall question him to, will be the general state of the country.

*Attorney-General.*—I am compelled to interrupt the learned gentleman. The course he is pursuing is that of an address to the jury, which certainly can not be permitted, nor indeed do I consider that the circumstances stated by my learned friend, are any way relevant to the case before the Court.

*Chief Justice Sewell.*—I certainly wish Mr. Stuart to confine himself strictly to what is absolutely evidence. I mean to points which, according to the acknowledged and established rules laid down to regulate the admission of testimony, he is entitled to insist upon offering, and we are bound to receive. I repeat to you, gentlemen, that the Court are equally sensible as yourselves, that a variety of difficulties distinguish this from ordinary cases, but there are none that render it either necessary or expedient to depart from every acknowledged principle upon which criminal proceedings are uniformly conducted. I do sincerely hope that the gentlemen on both sides will shape their course in that way, and whilst so doing, should any point arise involving in it a difference of opinion, the Court will enforce that exposition of the law which by their office it is their duty according to the best of their judgements to furnish. Perhaps it is impossible strictly to confine gentlemen on a case like this, it may be inconvenient, and even unfavourable to one or oth-

er of the parties, parties equally entitled to the protection of the Court, but I do not see that it can be entirely avoided; indeed on cross examination at all times considerable latitude is allowed.

*Attorney-General.*—If the jury were permitted to withdraw, I should not object to the argument being pursued in any way that the gentlemen pleased, as it was not from any apprehension that eventually it will at all weaken the case on the part of the Crown, that I interrupted, but because, though it is not relevant to the matter under our consideration, yet my learned friend's argument, being in fact an address to the jury, their minds might, by his eloquence, be led away from what really forms the only subject for their consideration and decision, namely, is or is not the prisoner guilty of the crime whereof he is accused, and for which he is receiving his trial? if the jury can be allowed to withdraw, we are prepared to meet my learned friend, otherwise we object to the course he is taking.

*Chief Justice Sewell.*—The jury unquestionably can not be permitted to retire. They are entitled to hear every point of law discussed, as well as the whole of the evidence. Every thing must take place before them, that they may be enabled to form a correct opinion.

*Mr. Stuart.*—I will, in submitting my argument to the Court, state nothing that I do not mean to prove.

*Attorney-General.*—That I dare say. The learned gentleman does not mean to state any thing that he does not wish to prove, but that is precisely the very objection we make. My learned friend is desirous to enter upon a long chain of circumstances which, if true, do not at all bear upon this case, and can not in any way be made evidence in it, although they might have a ten-

deputy, aided by his talents, to impress erroneously the minds of the jury, and lead them away from the only subject that ought to occupy their attention, namely, a consideration of whether Charles De Reinhard, the prisoner at the bar, is or is not guilty of the crime of murder.

*Mr. Stuart.*—I conceive it perfectly competent to me to state an outline of what I intend to prove; indeed except I am permitted to do so, I do not see how the Court, or the officers of the Crown, can be enabled, either to object, or to determine whether I am within or beyond the pale of cross examination. I have no wish to address the jury, because I know I can not be permitted to do so, but I must, as I conceive, be allowed to state to the Court an outline of what I am desirous of proving, as well as my reasons for believing that I am offering nothing but what is consistent with the accustomed course of proceedings.

*Mr. Justice Bowen.*—We set here, I take it, at the present moment, to decide whether the questions proposed by Mr. Stuart, and objected to by the Crown officers, are, or are not, such as ought to be allowed to be put. The learned Crown officers have been heard in support of their objections, and the counsel for the prisoner are now desirous of answering their objections, and of evincing to the Court that they are entitled to put the questions. Perhaps before the Court can satisfactorily decide that point, it is desirable that they should clearly comprehend the object of the gentleman in proposing to put them, as, if I understand the intention or design of these interrogatories, they are to commence a series of questions relative to a supposed duress in which they allege the prisoner to have been at the time of making the confession, and which being proved, it is expected the Court will decide to be not evi-

dence that can be permitted to go to the jury at all. It is our peculiar province to decide upon the admissibility of testimony in the first instance; and when admitted, to the jury alone belongs the power of determining the credit that is due to it. The Court perhaps may be assisted in forming its decision, if the supposed bearings of the testimony which it is wished to introduce are pointed out.

*Mr. Stuart.*—I mean to prove, that an armed force, which this witness accompanied to Fort William, took possession of, and retained it by force, against the inclinations of the North-West Company. I mean to prove, that the partners and servants of that company were arrested and sent prisoners to Montreal, upon charges of having committed murders, being guilty of high-treason, and a variety of other offences. I mean to prove, that this force, and particularly those who commanded it, represented that these measures of unheard of outrage and violence were perpetrated under the sanction of the government, to which it was represented to whole of the North-West Company were rebels and traitors. I mean to prove, that, in the prosecution of this system of lawless terror, a division from the same army captured and razed Fort Lac la Pluie, appropriating to their own use the property, and—

*Chief Justice Sewell.*—I must stop you there Mr. Stuart: all that took place at Fort Lac la Pluie, (and what it was we do not wish to know,) happened four days after the confession was made, and therefore can not be evidence. We can not allow you to go into that, because, whatever might have occurred, could not, by possibility, influence a confession made four days previously to its taking place.

*Mr. Stuart.*—I think, from the peculiarity of the case, that it is not absolutely impossible but

the effect might, even under these circumstances, have been produced, or I may perhaps be able to prove this statement to be incorrect.

*Chief Justice Sewell.*—That will be fair again—you certainly are entitled to do that, but I can not admit an action done four days before a certain occurrence could, by possibility, be influenced thereby.

*Mr. Stuart.*—We further mean to prove, that it was at the time in his knowledge that Fort William had been taken forcible possession of by the Earl of Selkirk, and an armed force under his direction; a force to all appearance of a military description; a force raised, equipped, and maintained, at the cost of the Earl of Selkirk, a force, under the more immediate command of this witness, captain D'Orsonnens, to whom it is said the confession was made, and who, at the very moment he is represented to have received this confession, was actually at the head of a division of that force, prepared to renew at Lac la Pluie the scenes of Fort William. We intend to prove, that to his knowledge the partners, clerks, and servants of the North-West Company, were by this military force treated as rebels and traitors, and that this usurpation of authority was represented to be under the countenance of the government, that it was constantly held out that all who did not agree to the terms offered by this armed body, would be treated as rebels and traitors, in corroboration of which it was urged that the leading persons engaged in the commerce of the North-West Company were sent to Montreal to be hanged. If we make out this case, what effect can a confession have when resulting from such circumstances? it is the right of the prisoner to shew, at any rate, every circumstance which may make in his favour. But, quitting for the

present the line of argument I have had the honour of submitting to the Court, let me solicit their attention for a moment to the nature of the evidence which, in a legal point of view, is furnished by a confession. It is universally considered by all writers on the nature of evidence as the weakest that can be exhibited, although at first blush persons might suppose that it was the strongest. In support of this doctrine I might advert to Blackstone who, with his usual eloquence, in vol. 4, page 256, in commenting on the nature of confessions, says, "and indeed they are, even in cases of felony at the common law, the weakest and most suspicious of all testimony; ever liable to be obtained by artifice, false hopes, promises of favour, or else menaces, seldom remembered accurately, or reported with due precision, and incapable in their nature of being disproved by negative evidence." I might with confidence rely upon the single authority of the eminent Judge I have cited, but the same doctrine is maintained by Mr. Justice Foster, and in terms peculiarly applicable to the pretended confession upon which we are arguing. This humane and learned Judge, page 243, says, "for hasty confessions, made to persons having no authority to examine, are the weakest and most suspicious of all evidence." The very case that is this moment before the Court; this pretended confession, how was it made? (admitting for the sake of argument that every thing we have heard relative to it is incapable of contradiction)—was it not a *hasty* confession? to *whom* was it made? to a person unquestionably having no authority to take a confession, and, from peculiar circumstances, exposing this pretended confession to all that suspicion which the learned Judge describes, as the inseparable attendant of confessions obtained "in a hasty

manner by persons having no authority." In assigning the reasons upon which the opinion I have read is founded, he proceeds to state, "proof may be too easily procured, words are often misrepresented, whether through ignorance, inattention, or malice, it mattereth not to the defendant, he is equally affected in either case, and they are extremely liable to misconstruction."—He adds to all this, what can not fail to strike every person as the distinguishing characteristic of the unfortunate situation of this defendant, "and withal this evidence is not, in the ordinary course of things, to be disproved by that negative sort of evidence by which the proof of plain facts may be, and often is, confronted." It is almost needless for me to urge that, if this sound opinion of an eminent jurist is correct and applicable in cases of felony which occur in the ordinary course of criminal jurisprudence, that it applies itself with tenfold force to that at present before the Court. How, I might ask, is it possible to bring in this case negative testimony? the difficulty would of itself amount to a prohibition. I might advert to a great number of cases in which the authorities record erroneous convictions, arising from the exercise of extra-judicial authority by persons having no qualifications, but my learned friend who follows me, will have an opportunity of pointing them out. The case of Harrison stands as a beacon on this subject, associated as it is with others of a similar description, so familiar to every gentleman in the law, that it would be trifling most unwarrantably with the time of the Court, and the understanding of the Crown officers, to attempt to refer to them. What weight then, I ask, can be anticipated to follow such a confession? a confession loaded with all those suspicious circumstances, which the humane and enlightened Judges to whom



I have referred, describes as the ordinary characteristics of confessions, but more especially of "hasty ones to unauthorised persons," and our daily experience, I was going to say, confirms the doctrine, that such confessions are "indeed, the weakest and most suspicious of all evidence." Let us then be cautious of giving a weight to such questionable testimony. Let me again draw your honours attention to the circumstances under which Fort William was captured, and the representations circulated throughout the interior of that country by the captors, for purposes too glaring not to be immediately appreciated. Let it be remembered that the whole of the partners and servants of the North-West Company had been sent to Montreal for trial, upon charges which it was confidently asserted would terminate in the whole of them being hung, and that all who did not submit to this usurpation, masking itself by a pretended authority from the government, were to share a similar fate with the rebels and traitors of Fort William. Let it be remembered that a portion of this same force proceeded to Fort Lac la Pluie, under the command of the same officer, and arrested the prisoner at the bar; that previous to the confession, as I expect to be able by the cross examination of this very witness, to prove incontestibly, he had by him been made a prisoner.

*Solicitor General.*—I should presume that my learned friend would not be permitted to lead a witness to convict himself of an offence, by which his own safety might be endangered; that I think beyond even the very extensive limits the learned gentleman himself has proposed to a cross examination.

*Mr. Stuart.*—Does my learned friend, the Solicitor General, intend to say, that I can not sift any witness as to the accuracy of any statement

he may have made? for example, if captain D'Orsonnens should, on his examination in chief, testify that De Reinhard was not in custody, may I not, by cross examination, sift whether that is the truth, and the whole truth? if I may not, I have yet to learn what cross examination consists of, and it is only by a most rigorous exercise of this right, appertaining in the most extensive sense to prisoners, that we can expect to extract evidence of events which have occurred in so remote a country. Let us, for a moment, look at the country where these transactions have occurred.— At a distance of twenty five hundred miles from any Court in which redress could be obtained for any injury, and the only avenue even to that, in the hands of his enemies. Once in the possession of captain D'Orsonnens, or the Earl of Selkirk, in vain would he have looked for any relief; for where was the Court to which he could apply for his writ of habeas corpus? where the judge to whom he could petition for the protection of the law, to have examination instituted whether the restraint he was suffering was a legal or an illegal confinement? when he heard of the outrageous violence committed at Fort William, that his employers, those to whom he had been accustomed to look up with respect, and from whom, in consideration of faithful services, he had a right to receive protection and assistance in difficulty, were prisoners, and threatened with ignominious deaths, whilst their property was retained possession of, he must have considered himself in the hands of his enemies; *his* enemies because *he* was in the service of the commercial rivals of that individual who, most unaccountably, when we reflect on his elevated rank, had raised and equipped at his own expense, the force which carried on the siege, and, to crown the whole, superintended in per-

son, the execution of the lawless enterprize. My learned friend, the Solicitor General, has compared this to a case to which I consider it by no means analogous. The case stated by Mr. Solicitor General was that of the riots in England, which unfortunately rendered it necessary to suspend that safeguard of personal freedom, the habeas corpus act. But, although for the security of the government, it was necessary to strengthen their arm by withholding from the subject that great barrier against the attacks or encroachments of arbitrary power, yet the examination a person so taken up underwent, was before a disinterested magistrate. Widely different was the case of any person in the Indian territory; the magistrate, before whom his examination must be taken, was at the head of an armed force, at the head of that very force which, by its lawless violence, had produced all those evils which we have this day to deplore. The case of the prisoner is one, I submit, which never has occurred in the course of law proceedings, and, it is to be hoped, will never again disgrace a Court. Sincerely do I trust that no part of His Majesty's dominions may again witness such unparalleled outrage as desolated, under a semblance of magisterial authority, that unfortunate country. The ground we take is this, that we ought to be permitted to shew the state of the country, because it is a part of our defence, is a part of the *res gesta* upon which we stand, and, that being the case, that the Court and the jury have a right to be made acquainted with it. It is in fact essential to the correct administration of justice between the Crown and that unfortunate man, that this evidence be laid before the Court and the jury, who will respectively give what weight to it they think proper, and that, if we are deprived of an opportunity of

so doing, we lose the main prop of our defence. I shall not trespass further on the time of the Court, as my learned friend who follows me will go fully into that part of the argument, and in so doing will, I am confident, satisfactorily prove that his mind at the time of making this pretended confession, was not free, but that it was under the influence of fear that it was extracted from him, and therefore ought not to be received in evidence.

*Mr. Vanfelson.*—Mon devoir au prisonnier est fondé en droit, et c'est bien important à lui.— Les officiers de la Couronne ont voulu mettre en preuve une confession qu'ils (si pour un moment nous l'admettions avoir été actuellement faite, que nullement nous faisons,) disent eux-mêmes a été faite à un individu sans aucune autorité pour recevoir la confession d'un criminel. Sous cette circonstance, cette confession est nulle, parceque ce n'est rien, excepté un conte fait *ex parte* comme les autorités Angloises l'appellent. La question, et la seule question, est à ce moment, étoit il libre au tems qu'il a fait cette declaration au capitaine D'Orsonnens ? Je dis que non, il ne l'étoit pas. Son esprit n'étoit pas libre. Il étoit tout-à-fait un prisonnier, parcequ'il n'avoit pas le moyen d'échapper de ceux qui étoient ses ennemis. Regardons pour un moment les situations de De Reinhard et du capitaine D'Orsonnens, et regardons aussi la situation des pays Sauvages dans ce tems. De Reinhard étoit commis au service de la Compagnie du Nord-Ouest, et le capitaine D'Orsonnens étoit au service de la Compagnie de la Baie d'Hudson.<sup>(1)</sup>

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<sup>(1)</sup> *Mr. Vanfelson.*—My duty to the prisoner is founded upon law, and is very important to him. The Crown officers have been desirous of putting in proof a confession which, (supposing

*Solicitor General.*—My learned friend ought to be correct in his statements, which he certainly is not, when he asserts that captain D'Orsonnens was in the service of the Hudson's Bay Company.

*Mr. Vanfelson.*—I state it because in point of fact he was so, as, if captain D'Orsonnens has not admitted it himself, we shall satisfy the jury, from his own hand writing, that it was the case, au tems que le capitaine D'Orsonnens envoyoit le billet avec la proclamation par M'Donald et Nolin, et lui donna l'avis de l'attendre. Le billet étoit signé capitaine, à ce que je crois. Je demande s'il étoit simple particulier pourquoi lui donner l'avis de l'attendre ?<sup>(2)</sup>

*Mr. Justice Bowen.*—It was not quite so, I believe. He said, I think, that he advised him to stop, or something like counselled him to stop, at Lac la Pluie till he should arrive there.

*Mr. Vanfelson.*—Votre honneur me pardonnera,

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for a moment that we were to admit that it had in reality been made, which we by no means do admit) they themselves say was made to an individual not invested with any authority to receive the confession of a criminal. Under this circumstance, this confession is void, because it is nothing but an *ex parte* story, as the English authorities call it. The question, and the only question, at this moment, is, was he at liberty at the time he made this declaration to captain D'Orsonnens? I say no, he was not. His mind was not in a state of freedom. He was completely a prisoner, because he had not the means of escaping from those who were his enemies. Let us behold, for a moment, the respective situations of De Reinhard, and of captain D'Orsonnens, and let us also take a view of the situation of the Indian country at that period. De Reinhard was a clerk in the service of the North-West Company, and captain D'Orsonnens was in the service of the Hudson's Bay Company.

(2) At the time that captain D'Orsonnens sent the note with the proclamation by M'Donald and Nolin, and told him that he was to wait for him. The note was signed by him as captain, as I believe, I ask why, if he was a simple individual, did he tell him to wait for him?

mais ce n'étoit pas un conseil, mais un avis de son approche. Il disoit, que de la distance de trente lieues, il avoit envoyé Nolin et M'Donald avec avis.<sup>(3)</sup>

*Mr. Justice Bowen.*—You certainly are wrong—I will read to you my notes. Speaking of the savages whom he had met, captain D'Orsonnens says: “Ils m'ont depeigné un militaire blanc, comme un de ceux qui me gardoient, et par la description, je n'avois aucune doute que c'étoit De Reinhard. Le lendemain, à ce que je crois, j'ai rencontré monsieur Dease, qui venoit du Lac la Pluie. J'ai demandé si Reinhard, étoit au Lac la Pluie, et il m'a dit qu'oui. En conséquence j'ai envoyé M'Donald et Nolin, quand nous étions à trente lieues du Lac la Pluie, en avant, pour porter un billet de ma part, et la proclamation de Sir John Coape Sherbrooke du 16 Juillet 1816, le tout adressé par moi à De Reinhard.— Dans le billet je lui priois de m'attendre, désirant d'avoir de lui des informations sur ce qu'il s'étoit passé dans la Rivière Winnipic.”<sup>(4)</sup>

*Mr. Vanfelson.*—Je procede donc à considerer

(3) Your honour will excuse me, but it was not an advice that was given, but it was an appraisal of his approach. He said that he had sent Nolin and Macdonald, from the distance of thirty leagues with intelligence.

(4) “They described to me a military man, a white, like one of those who were my guard, and by the description I had no doubt but it was De Reinhard. On the following day, as I believe, I met Mr. Dease, who came from Lake la Pluie. I enquired whether De Reinhard was at Lake la Pluie; and he told me that he was. In consequence, when we were at thirty leagues distance from Lake la Pluie, I sent M'Donald and Nolin forward to carry a note from me, together with the proclamation of Sir John Coape Sherbrooke of the 16th July, 1816, the whole addressed by me to De Reinhard. In the note I desired him to wait for me, as I wanted him to give me information of what had occurred in the River Winnipic.”

la situation actuelle de De Reinhard au moment de cette conversation dans laquelle mes savans confrères disent qu'il a fait la confession de ce meurtre. Le Fort William a été pris et restoit en possession du Milord Selkirk. Le capitaine D'Orsonnens s'étoit rendu au Lac la Pluie avec dix sept hommes armés et dix-huit Canadiens ; mais le capitaine D'Orsonnens est, comme il nous a dit, un simple individu, ou un simple particulier. A présent je vous prie de me donner votre attention pour un moment. Je vous prie de vous souvenir que le Fort William a été pris par Milord Selkirk, et qu'au tems de cette conversation De Reinhard le savoit. Je prie l'attention de la Cour à cette circonstance, parceque, dans mon humble opinion, son effet sera de détruire tout-à-fait cette confession. Pour supporter ma proposition, j'ai l'honneur de vous faire voir une distinction dans la situation du prisonnier différente de ce que mon savant confrère Stuart a fait. Je ne dis pas, s'il plait à la Cour, que De Reinhard étoit actuellement un prisonnier ; je ne dis pas que son corps a été véritablement emprisonné, mais l'argument qui j'ai l'honneur, de soumettre à la Cour est ceci. L'embouchure de ce pays là étant dans les mains de Milord Selkirk et ses gens, et une partie de cette même force ayant (au moment de la confession) entouré le poste du Bas de la Rivière, (Lac la Pluie,) il n'étoit pas libre, et conséquemment la confession ne pouvoit pas être produite comme une preuve contre le prisonnier. Il falloit que la conséquence de ces circonstances fut d'exciter de la crainte, et je sou mets, si l'esprit est excité par la crainte, donc la confession n'est pas libre, et avant qu'une confession puisse être reçue contre un prisonnier, il est absolument nécessaire pour les officiers de la Couronne d'établir qu'elle a été faite volontairement et librement. La règle est générale, et s'il y a

des exceptions contre la règle, c'est le devoir des Avocats de la Couronne de les produire. (\*) I shall refer to M'Nally on Evidence. Under chapter 6, rule 9, page 43. "A confession forced from the mind by the flattery of hope, or the torture of fear, comes in so questionable a shape, when it is considered as evidence of guilt, that no credit ought to be given to it, and therefore it ought to be rejected."—Dans ce cas là assurément la confession de De Reinhard doit être rejetée. Il

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(\*) I proceed then to consider the real situation of De Reinhard at the period of this conversation, in the course of which my learned brethren say, that he made a confession of this murder. Fort William had been taken by, and remained in possession of, My Lord Selkirk. Captain D'Orsonnens had come to Lake la Pluie with seventeen armed men and eighteen Canadians; but captain D'Orsonnens is, as he states to us, a simple individual, or simply a private person. I now beg you will honour me with your attention for a moment. I beg you will remember that Fort William had been taken by Lord Selkirk, and that at the time of this conversation De Reinhard knew that to be the fact. I entreat the attention of the Court to this circumstance, because, in my humble opinion, its effect will be wholly to destroy this confession. In order to support my proposition I have the honour to lay before you a distinctive definition of the situation of the prisoner different from that which my learned brother Stuart has pointed out. I do not say, may it please the Court, that De Reinhard was actually a prisoner; I do not say that his body was absolutely and truly imprisoned, but the argument which I have the honour to submit to the Court is this—The outlet of this country being in the possession of Lord Selkirk and of his people, and a part of the same force having, at the very moment of the confession, surrounded the post of Bas de la Rivière (Lac la Pluie,) he was not free, and consequently the confession can not be produced as evidence against the prisoner. The natural consequence of these circumstances would be to excite fear, and I submit that if the mind is under the operation of dread, it follows that the confession is not a free one, and before a confession can be received as evidence against a prisoner, it is absolutely necessary for the Crown officers to establish the fact that it was made voluntarily and in freedom. The rule is a general one, and if there are any exceptions to this rule, it is the duty of the Crown lawyers to produce them.



n'étoit pas libre au tems de la conversation. C'étoit impossible de le sortir des mains de ses ennemis parcequ'ils avoient possession du Fort William, le seul débouchement du pays d'en haut, et s'il ne pouvoit pas échapper de leur mains, il n'étoit pas libre, et sa confession n'est pas une preuve, conformément aux loix, contre lui. C'est dangereux, très dangereux, d'admettre comme preuve contre un prisonnier, ce qu'il a parlé sous la contrainte.<sup>(6)</sup> I refer again to the same section and chapter of M'Nally. "These rules (says Mr. "Loft in his commentary upon Baron Gilbert's "Evidence), reflect the brightest lustre on the principles of English law, which benignly considers "that the human mind, under the pressure of calamity, is easily seduced, and liable, in the alarm of "danger, to acknowledge indiscriminately a falsehood or a truth, as different agitations may prevail, and therefore a confession, whether made "upon an official examination, or in discourse with "private persons, which is obtained from a defendant by the impression of hope or fear, *however slight* the emotion is planted, is not admissible "evidence." Et la raison pour cela, il dit, est celle :<sup>(7)</sup> "For the law will not suffer a prisoner "to be the deluded instrument of his own conviction." La Cour verra à-present que l'argument de mon savant confrère Stuart, est qu'il étoit un

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(6) If that be the case, assuredly the confession of De Reinhard must be rejected. He was not a free agent at the time of the conversation. It was impossible to rescue him from the hands of his enemies, because they had possession of Fort William, the only outlet of the interior country ; and if he could not escape from their hands he was not at liberty, and his confession is not evidence against him, such as can be received in law. It is dangerous, very dangerous, to admit what a prisoner may have said, under the impression of fear, as evidence against him.

(7) And the reason for that, he says, is this :—

prisonnier actuel, mais moi, que son esprit n'étoit pas libre, et que cette circonstance s'opposera avec succès contre la confession. (\*) I again refer to M<sup>r</sup> Nally. Immediately following the paragraph which I have just read, he gives an instance:—"Harrison's case," of the danger of receiving confessions obtained through the influence of either hope or fear. Here a man confessed a murder, and years after, the individual was found to be alive. Enfin je dis que le Fort William étant pris, et une partie de la même force étant au Lac la Pluie, il étoit dans les mains de ses ennemis, et n'étant pas libre, sa confession n'est pas preuve, conformément aux loix. (\*)

*Attorney-General.*—This argument involves in it two questions; whether certain places were taken to the knowledge of the prisoner, and what influence that circumstance produced on the mind of the prisoner. My learned friends, in arguing on the former enquiry, assume as a fact that which does not appear, viz. that Fort Lac la Pluie was taken, whereas it stands in evidence that it was not taken till four days after the confession, and instead of influencing the prisoner to make this confession, it was taken possession of from the circumstances disclosed in his confession. This I conceive does away with the most considerable part of the arguments of both gentlemen, but more particularly of my learned friend Mr. Stuart. But my learned friends say that because Fort

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(\*) The Court will now perceive that the argument of my learned colleague, Stuart, is that he was actually a prisoner, but mine, that his mind was not free, and that that circumstance will successfully oppose the confession.

(\*) In conclusion, I say that Fort William being taken, and a part of the same force being at Lake la Pluie, he was in the hands of his enemies, and, not being a free agent, his confession is not evidence, according to law.

William had been taken, therefore we ought to lose the benefit of this confession; I really can not see how that circumstance can operate to the exclusion of this evidence, should we for a moment admit the statements of the gentlemen on that subject to be correct. In what way could it lead him to make a confession? did it arise from fear that he would lose his life, or that he might be put to the sword, if he did not confess? I should think he took the most ready way to sacrifice his life, to accuse himself to his enemies, as they are called by the learned gentlemen, of a crime which, from the proclamation he had just read, would compel them to make him a prisoner. One of the learned gentlemen has argued that he was not free at the time of making the confession, and therefore it ought not to be admitted, but supposing, (which however is clearly proved not to be the fact,) that he was under restraint at the time, are not confessions generally made by persons in custody? But he was perfectly free, and I do think that if ever there was a strong case made out, this is it. The prisoner meets a man with whom he has formerly served in the army; upon meeting they shake hands, enter into conversation, and, under perhaps the influence of conscience, he voluntarily accuses himself of a crime, or confesses the perpetration of a murder. If this is not a free confession, I do not think it will ever be possible for one to be made that can be offered as evidence against a prisoner. Relative to the letter and proclamation about which so much has been said, I do not perceive that they weigh at all on the case. The proclamation contained no general pardon; on the contrary, it called upon all persons to be aiding and assisting in bringing to justice all persons who had committed offences, and what the prisoner may now say, as

to what he imagined might be the effect of making a confession, can not destroy, what we consider a perfectly voluntary confession. We think the arguments of our learned friends abundantly shew the danger of departing from what I had the honour to enforce in opening as the leading, and indeed the only, principle on which it could be invalidated; namely, that it was made subsequent to, and in consequence of, a proffer of reward if made, or a threat of punishment if it was not made, and I again offer it to the Court. The only circumstances that can prevent a confession of a person from being made evidence against himself, is that it can be shewn to have been made under hope, or fear, from direct promises of benefit, or menaces of danger. On this opinion we think we may firmly rely as being law, and the facts being distinctly proved that this was a free and voluntary confession, it must by your honours be allowed to go to the jury. It may be said, he thought it would make in his favour if he confessed, or that he imagined it would be worse for him if he did not, but his imagination is not to destroy this evidence. He might choose to imagine the world would soon be at an end, indeed there is no answering for a man's imagination, but that is not to sit aside a deliberate act. Once admit this to be sufficient to set aside a confession, and there never will be another proved in this Court, for all that a prisoner will have to do will be to say, that when he made his confession, he imagined it would be better for him. Your honours know that persons are frequently prosecuted upon their confessions, and though that confession is destitute of any corroborating circumstance, yet, being satisfactorily proved to have been made, conviction has followed, but never would occur again, if a prisoner were allowed to turn round

and set his confession aside by saying, that at the time of making it he thought it would be better for him; but even this was not the case of De Reinhard, it does not appear even that he thought it would be better for him. On the whole, considering the circumstances under which it was made, we contend it is a good confession in law, and therefore contend, on the part of the Crown, that we are entitled to have it received by the Court, and submitted to the jury, who will give that weight to it which they, in their consciences, consider it to deserve.

*Chief Justice Sewell.*—On all testimony offered in a Court of justice, either in civil or criminal cases, two questions arise: 1st. whether the Court can legally receive it; and 2d. whether the jury ought to believe it; and this is particularly true of confessions in criminal cases. We have at present to establish the first point, and, that the decision of the Court upon it may be clearly understood, I will state a case. A highway robbery was committed, but it was uncertain by whom: a man in company of some others, the same night, dropped some words which excited their suspicion, and they took him before a magistrate, before whom he admitted himself to be the man, and related the circumstances of the robbery; he was committed to the gaol, to await his trial; upon the trial, his confession was proved, and it being voluntary, without either promise or menace, it went to the jury. Upon his defence it was satisfactorily proved that at the time the robbery had been committed he was at a great distance, and that he had made this confession to enable his brother, who had actually committed the robbery, to make his escape; the confession was evidence for the jury, though destroyed by subsequent positive testimony of an alibi, but that overturning

was the result of the jury giving credit to the additional testimony which directly contradicted the confession. Let us exemplify the distinctions of the present case. Had the question been, whether testimony to contradict his confession could be received, we should have decided, we should say yes. If it was whether the confession, after being disproved, or rather negatived, should go to the jury, we should say yes, for we, sitting as judges, should have no power to refuse the confession going to the jury, if there is no proof of a direct influence having been resorted to by some person in company of the man, such as holding out an expectation of punishment if not made, or an expectation of benefit, if made. It becomes then a question of credibility upon opposing testimony, and who is to decide that? why unquestionably the jury. When a direct influence has been clearly proved, upon an examination on motion, or on the *voire dire*, judges have said, this shall not go to the jury at all, it can not be evidence, and therefore they shall not be exposed to the influence of statements, which are not admissible as evidence; but the influence has been apparent before any judge has exercised his authority to that extent, but neither myself nor my learned brother know any case in which the principle has been carried farther. We admitted the confession in the present case to be gone into, what else could we do with that which was evidence according to the strictest rules of a Court of justice. We do not, by admitting it, say that it is to be conclusive, or that it can not be contradicted. If you have evidence which goes to that, it must be admitted; the case I have cited clearly proves it must be admitted, it is your right to have it received, and it shall be preserved to you. Upon the question, if testimony is offered of a nature to

do away a confession that is already in evidence, who are to be the judges of that evidence? who are to decide what is the effect produced by it? we answer in a moment, the *jury*, the *jury* undoubtedly, but if evidence of a direct and immediate influence on the mind of the prisoner was brought forward, then, *we*. The evidence you offer, to prove from the influence upon his mind that his confession ought not to go to the jury, is remote, very remote, indeed; too much so for us to say that it ought not to go to them, they will give what credit to it they think it merits, but it is trenching infinitely too far upon their rights, indeed it would be usurping on the peculiar province of the jury for us to decide upon the merits of the confession, which we consider we should be doing if we acceded to the desires of the prisoner's counsel. Last time this subject was before us, you went no farther than to the general enquiry, whether the prisoner, at the time of making the alledged confession, knew of the capture of Fort William, and, upon that question being answered, the compromise, if I may use the expression, was entered into by which the trial closed. Let me beg the gentlemen concerned for the prisoner to recollect, that to the facts which bear in any way upon the case there can be no objection, but to go into a detail of all the facts connected with this lamentable quarrel, we can not allow them. As a fact, (though I do not see that it can in any way affect the case,) you may prove, if you wish it, that Fort William was taken possession of, and that De Reinhard knew it before he made his confession. Relative to Fort Lac la Pluie, you can not give evidence that it was taken, till you contradict the present witness, who swears that it was not taken possession of for four days after the confession of the prisoner, and that his informa-

tion given at the time of making the confession, suggested the necessity (as a measure of self preservation to a certain extent) there was to take it.

*Mr. Justice Bowen.*—The argument we have been attending to has arisen from two questions which the counsel for the prisoner consider it their duty to insist on putting to the witness, captain D'Orsonnens: 1st. whether Fort William was not taken possession of, or captured, by persons in the service of the Hudson's Bay Company, previous to the pretended confession of De Reinhard at the fort of Lac la Pluie, and that to De Reinhard's knowledge? 2d. whether the fort of Lac la Pluie was not also taken by persons in the service of the Hudson's Bay Company previous to the said confession?

We consider the circumstances under which the confession was made as so fair, that we were bound to admit it, and accordingly received it as evidence proper for the jury. A fact has come out in the cross examination, namely, that Fort William was before, and at the time, the prisoner made his confession, in the possession of the Earl of Selkirk, it therefore only remains to enquire whether it was so to the knowledge of De Reinhard, did he know it? the fact is clearly and distinctly in evidence, and the influence the counsel for the prisoner wish to draw from this fact, in conjunction with what passed at Fort Lac la Pluie, (which I shall presently advert to,) is, that it ought to exclude his confession. By the gentlemen engaged in the defence, the question does not appear to have been seen in two points in which, I confess, I have, from the first, seen it. 1st. That the circumstance of Fort William being taken was not strong enough to influence him to confess, and 2d. that, in the nature of things, if all is true that has been asserted, by being silent



he had another chance of escape, for it appears to me to be an act of madness to imagine, that by confessing to his enemies, (as they are described in the argument to be,) his condition would be bettered. Relative to his being a prisoner, the evidence of captain D'Orsonnens positively contradicts the assertion. Captain D'Orsonnens says that he was there as a simple individual, and that an armed force followed him at a distance, but did nothing for four days after the confession was made by the prisoner, and that what was then done; so far from influencing the confession, was suggested by it, and that De-Reinhard confessing he had committed a murder, induced him, in obedience to the proclamation of the governor, to make him a prisoner. Except you mean to say that the events passing in that country were such, that a rational being would confess, or rather accuse himself of a crime that he never committed; I do not see the bearing of your questions. It will be for the jury to determine whether they were so, and upon a cross examination it would be wrong to shut out any facts which may lead to that conclusion; but it is only the facts that can be admitted, and those only that took place previous to the confession, and I am free to confess that I do not see the bearing of them. I do not see what effect the capture of Fort William is to have on this case, but it is a fact, and you are entitled to have it noticed if you think it important.

*Cross examination of captain D'Orsonnens continued  
by Mr. Stuart.*

Voulez vous me dire, capitain D'Orsonnens, si Milord Selkirk et ses gens prirent possession du Fort William, et quand? (1°)

(1°) Will you tell me, captian D'Orsonnens, whether Lord

*Chief Justice Sewell.*—He has already said that Lord Selkirk et ses gens ont pris possession du Fort William dans le mois d'Aout.<sup>(11)</sup>

*Mr. Stuart.*—But, your honour, it is important to me, in my defence of the prisoner, to shew, not only that the Earl of Selkirk took possession of the fort, but that he took possession of it by force, and not only that he took it forcibly, but that he retained it by force. I must be permitted to put that question, as I intend to follow it up by others.—*Mr. Stuart repeated the question.*

*Captain D'Orsonnens.*—Le treizieme ou quatorzieme d'Aout 1816, Lord Selkirk a pris possession du Fort William, c'étoit le treizieme que ses gens entroient au fort, à ma connoissance.

*Mr. Stuart.*—A-t-il été pris volontairement; c'est-à-dire avec le consentement des gens qui l'occupaient, ou par force? parceque vous parlez de la possession, comme si c'étoit volontairement donnée à Milord. Dites nous le fait, c'est tout ce que je vous demande, juste, oui ou non?

*Captain D'Orsonnens.*—Je me considere qu'il le prit par nécessité dans l'exécution de son devoir comme un magistrat.<sup>(12)</sup>

*Mr. Stuart.*—That is merely your opinion, for

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Selkirk and his people took possession of Fort William, and when?

(<sup>11</sup>) Lord Selkirk and his people took possession of Fort William in the month of August.

(<sup>12</sup>) C. D'O.—The thirteenth or fourteenth of August 1816, Lord Selkirk took possession of Fort William. It was on the thirteenth that his people entered the fort, to my knowledge.

*Mr. S.*—Did he take it voluntarily, that is to say, with the consent of the people who occupied it, or did he take it by force? because you speak of possession as if it had been voluntarily given to My Lord. Tell us the fact, that is all I ask of you, just, yes or no?

C. D'O.—I consider that he took it by necessity in the execution of his duty as a magistrate.

which I did not ask. I want a direct answer to a very plain question as to a matter of fact. Was, or was not, Fort William taken possession of by force? just, yes or no.

*Captain D'Orsonnens.*—Je me considère qu'il le prit par force, avec raison, ou par nécessité.<sup>(13)</sup>

*Mr. Stuart.*—We do not, captain D'Orsonnens, ask you for your opinion of the justice of the capture, or for any thing but a simple, but direct, answer to a matter of fact. Was, or was not, Fort William taken possession of by force?—just say yes or no, according to your knowledge.

*Captain D'Orsonnens.*—Le quatorzième d'Aout, ou environ ce jour là, le Lord Selkirk a pris possession de Fort William. Je dis cela de ma propre connoissance.<sup>(14)</sup>

*Mr. Stuart.*—I wish it to be taken down, that Fort William was taken possession of by Lord Selkirk, to the knowledge of this witness, and I will now ask him, was it taken by force or voluntarily given up. Was it, captain D'Orsonnens, taken by force or not? answer just, yes or no.

*Captain D'Orsonnens.*—Je me considère qu'il l'a pris par force, mais par nécessité dans l'exécution de son devoir comme———<sup>(15)</sup>

*Mr. Stuart.*—We do not want your opinion, as to why it was taken possession of by force. It was a plain question as to a fact, and I beg that the witness' answer to the fact, namely, that he considered the fort to have been taken by force, may be inserted on your honours' notes. His

(13) I consider that he took it by force, of right, or by necessity.

(14) On the fourteenth of August, or about that time, Lord Selkirk took possession of Fort William. I say that from my own knowledge.

(15) I consider that he took it by force, but by necessity in the execution of his duty as———

opinion as to the necessity for so taking it, is not evidence, and of course will not be taken.

*Chief Justice Sewell.*—Est-il de votre propre connoissance que vous dites ceci?

*Captain D'Orsonnens.*—Oui, je dis de ma propre connoissance, que le fort étoit pris en possession par Milord Selkirk. J'étois là dans l'exécution de mon devoir et ——— (16)

*Chief Justice Sewell.*—Before, Sir, that I take down your answer to Mr. Stuart's last question, and that which, by way of explanation, I asked you, it is my duty to inform you, that you are not bound to answer any question by which your own conduct may be at all implicated, even in the remotest degree. This Court is bound to protect you from any such step, and will not fail to interpose its authority for that purpose. I do not, captain D'Orsonnens, mean to intimate that your answering the questions would expose you to any unpleasant consequences, but that you may not be taken unawares, I shall put the question again, and in the exercise of your own sound discretion, you will either answer it or decline doing so, as you shall judge proper.

Dites-vous de votre propre connoissance, que le Lord Selkirk a pris, par force, possession de Fort William dans le mois d'Aout 1816?

*Captain D'Orsonnens.*—Je dis cela de ma propre connoissance. (17)

(16) *C. J. S.*—Is it of your own knowledge that you say this?

*C. D'O.*—Yes, I say of my own knowledge, that the fort was taken possession of by my Lord Selkirk. I was there in the execution of my duty, and ———

(17) *C. J. S.*—Do you say of your own knowledge that Lord Selkirk took possession of Fort William, by force, in the month of August 1816.

*C. D'O.*—I say that from my own personal knowledge.

*Solicitor General.*—I am really ashamed of the frequent interruptions I give to the business before the Court, but in begging the Court's pardon, I beg leave to say that I do not think the witness understood the question. In point of fact, he did not see Fort William taken at all; he only heard of it, and therefore it can not be evidence. Indeed the witness has only spoken of what he considered, which my learned friend upon the opposite side has constantly refused to admit to be evidence when that consideration made against him. Might I beg of your honour to put the question to the witness, whether, to his own knowledge, Fort William was taken possession of by force, or even at all, to his own proper knowledge, for, in point of fact, I believe, he did not see it taken.

*His honour the Chief Justice, again put the question and captain D'Orsonnens commencing his reply, je considere, was interrupted by*

*Mr. Stuart.*—I have repeatedly put to you, captain D'Orsonnens, a very simple question; you have answered it, by giving, in addition, your opinions as to the reasons, or what you called the necessity, that existed for taking it. I want merely the fact. You may decline answering the question if you think proper, or if you answer it, let me beg you simply to say, yes or no. Do you know that Fort William was taken possession of by force, by the Earl of Selkirk? simply yes or no.

*Captain D'Orsonnens.*—Non.

*Mr. Stuart.*—Let the answer be taken down, if your honours please, for, upon the defence, we shall have occasion to refer to it.

*Chief Justice Sewell.*—The simple point is, did or did not captain D'Orsonnens see the fort taken by force?

*Captain D'Orsonnens.*—Je ne pourrois pas dire simplement oui ou non, moyennant que si j'avois

ainsi répondu, peut-être les criminels paroîtroient être innocens, et les innocens paroîtroient coupables.—Je considère que le fort étoit pris par force, mais par nécessité, c'est ma croyance, d'après ce que j'ai entendu.<sup>(11)</sup>

*Chief Justice Seiwell.*—We must have the fact whether, of your own knowledge, you speak of its having been taken by force. Did you, Sir, see it taken, or is it merely from what you have heard, that you speak of Lord Selkirk's mode of obtaining possession?

*Captain D'Orsonnens.*—Je ne sais pas s'il l'a pris par force ou non, comme je ne l'ai pas vu prendre en possession. Je ne sais rien si Milord gardoit possession par force, l'été et l'hiver. J'ai resté là jusqu'au dixième de Septembre, et Milord Selkirk et ses gens étoient alors en possession. Je suis parti alors pour le Lac la Pluie, et je ne sais pas pour combien de tems après, ils ont resté en possession de Fort William que par *ouïr-dire*, parce que je n'y ai pas retourné. J'ai parti de Fort William le dixième de Septembre, et je me suis rendu au Fort Lac la Pluie, le second ou troisième d'Octobre. J'ai envoyé Nolin et Macdonald avant moi au Fort Lac la Pluie, avec un billet adressé à De Reinhard. Je me rappelle le contenu; par la lettre je l'ai prié de m'attendre pour me donner des informations ou des connoissances de ce que se passoit à la Rivière Rouge, et dans la Winnipic. Ma lettre étoit signée par moi, comme capitaine. J'ai toujours signé mon nom, capitaine D'Orsonnens. J'étois alors à demi-paie, et j'avois le droit de porter le titre. C'est probable, et je crois que j'ai

(11) I could not say simply yes or no, considering that if I had so answered, the criminals might perhaps appear to be innocent, and the innocent might appear guilty. I consider that the fort was taken by force, but by necessity, that is my belief, according to what I have heard.

ajouté, "commandant l'avant garde des voyageurs de la Compagnie de la Baie d'Hudson," ou quelque chose semblable. Je voudrais que le prisonnier pourroit produire le billet.<sup>(11)</sup>

*Mr. Stuart.*—Was the paper to Mr. Dease of the 6th, signed in the same way?

*Chief Justice Sewell.*—The court are decidedly of opinion that it is impossible they can permit you to go into an examination of what took place subsequent to the confession. What possible influence can an occurrence which took place on the 6th, have on a confession made on the 2d or 3d of October? You must not enter upon circumstances subsequent to the confession, as they can not affect the confession.

*Mr. Stuart.*—We consider it to be very important to us to prove that, throughout the whole of these transactions, he acted in a military capacity. I should imagine that, as a question to credibility, I might be permitted to put the question. Capt. D'Orsonnens has said that he went there as a sim-

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(11) I do not know whether he took it by force or not, since I did not see it taken possession of. I know nothing of my Lord's retaining possession of it by force during the summer and winter. I remained there till the 10th of September, and My Lord Selkirk and his people were then in possession. I then departed for Lake la Pluie, and I do not know for what length of time afterwards they remained in possession of Fort William, only by hearsay, because I did not return thither. I left Fort William on the tenth of September, and I got to Fort Lake la Pluie, on the second or third of October. I dispatched Nolin and M'Donald before me to Fort Lake la Pluie, with a note addressed to De Reinhard. I do not recollect the contents. By the letter I requested him to wait for me to give me information, or intelligence of what was going on at Red River, and in the River Winnipic. My letter was signed by me as captain. I always signed my name captain D'Orsonnens. I was then on halfpay, and I had a right to bear the title. It is probable, and I believe that I added "commanding the advanced-guard of the " voyageurs of the Hudson's Bay Company," or something similar. I wish that the prisoner could produce the note.

ple individual. If I can by these questions substantiate that he acted in a military capacity, I at once establish the principal part of my defence, for I prove the influence upon the mind of the prisoner to be sufficient to do away this pretended confession.

*Chief Justice Sewell.*—Any thing antecedent to the confession that by possibility can bear upon it, and that you, Mr. Stuart, think likely to destroy or weaken it, by evincing that it was made under such suspicious circumstances, that it is not entitled to credit from the jury, certainly must, and shall be, received, but we can not, on the other hand, permit you to adduce evidence of what might have taken place afterwards. We have not allowed the examination of capt. D'Orsonnens to be carried beyond the 3d. You must remember that on Saturday I opposed it by remarking that it was no manner of consequence how the receipt given to Mr. Dease was signed, as it was given subsequent to the confession. The Court have decided that you can not go into such evidence, and we hope you will not attempt it.

*Cross Examination continued by Mr. Stuart.*

Avez-vous dit à Mons. Nolin, ou à Mons. M'Donald, ou avez-vous donné des ordres d'arrêter le prisonnier?

*Captain D'orsonnens.*—Non, point de tout; je les ai dit de lui détenir, comme je pense.<sup>(2°)</sup>

*Mr. Stuart.*—Détenir ou arrêter?

*Captain D'orsonnens.*—Non pas arrêter. Je ne puis pas dire si le billet étoit pour lui prier de

(2°) *Mr. S.*—Did you tell Mr. Nolin, or Mr. M'Donald, or did you give any orders to arrest the prisoner?

*C. D'O.*—No, not at all; I told them to detain him, I think.



attendre, ou pour l'ordonner de me rester. J'étois pressé au tems, mais je n'ai pas donné d'ordre, ni à Mons. Nolin, ni à Mons. M'Donald, ni à aucune autre personne, avant que je me fus rendu au Lac la Pluie, d'arrêter ou détenir le prisonnier De Reinhard par force. En donnant le billet je les ai dit d'induire De Reinhard de rester pour attendre mon arrivée. Je les ai dit de l'induire à rester seulement, et comme je connoissois l'honnêteté du prisonnier, j'étois bien persuadé, qu'en voyant la Proclamation de Sir John Coape Sherbrooke, et recevant mon billet, qu'il resteroit. Quand j'étois pour parler à De Reinhard au fort, il y avoit quelques hommes qui suivoient. Je ne puis dire le nombre juste ni s'ils étoient armés ou non. Ils suivoient de loin par curiosité. J'ai arrivé au Fort du Lac la Pluie avec deux hommes qui étoient armés, et j'étois armé moi-même. Les autres suivoient bien éloignés, et je ne puis pas dire s'ils étoient armés ou non. Je n'ai pas reçu, ni attendu, une rémunération de Milord Selkirk, ni de la Compagnie de la Baie d'Hudson. Je n'ai jamais dit à aucune personne que j'attendois une rémunération de Milord Selkirk, ni de la Compagnie de la Baie d'Hudson. J'ai fait des avances aux gens de Lord Selkirk, et de la Baie d'Hudson, de mon propre argent, et j'en ai retiré depuis le montant, trente-neuf livres, de Mons. Garden. Je l'ai reçu dans un seul payement par une traite sur la banque. Je l'ai reçu dans ce mois-ci, entre le dixième et quinzième, à ce que je crois. C'étoit avancé sur les gages. Je n'ai pas dit, avant d'arriver au portage du Lac la Pluie, que j'avois pris Fort William, ni que j'avois pris d'autres forts, et que je prendrois bien celui-là. Je ne me rappelle pas d'avoir dit à la Rivière Rouge, à aucune personne, que je n'étois pas mon maître, et que mon départ dépendoit de Milord Selkirk. Il est possible que

je l'ai dit, mais ce n'étoit pas assez frappant pour m'en ressouvenir. J'avois un pavillon planté contre ma tente à Lac la Pluie, mais à mon arrivée je n'avois pas de canons. Je n'avois pas de canons montés, qu'après la déclaration faite par De Reinhard. Après la déclaration Mons. Vitchie m'a apporté deux petits canons du portage. Le portage a un mille et demi de distance du Fort Lac la Pluie. C'étoit le cinquième ou sixième d'Octobre. J'ai bien expliqué à De Reinhard que les hommes qui étoient avec moi, n'étoient pas engagés comme militaires, mais comme colons, pour la Rivière Rouge, et que s'ils ne vouloient pas prendre des terres à la Rivière Rouge, ils avoient le droit de retourner en Europe par la Baie d'Hudson, ou par Canada, comme ils voudroient. Il y avoit une longue conversation entre moi, le prisonnier, et Mons. Dease, et j'ai dit au prisonnier après sa déclaration, et c'est très possible avant la confession, et à Mons. Dease, (parce que la conversation lorsque j'étois dans le fort auparavant étoit général entre les cinq) que je considérois les gens du Nord-Ouest d'avoir commis un grand crime en détruisant la colonie de la Rivière Rouge, et que je considérois les gens qui avoient agi en la détruisant égales à des rebelles, ou même qu'ils étoient tout-à-fait rebelles, et que cela ne pourroit pas passer sans être puni; peut-être aussi qu'en cette même conversation j'ai dit que j'attendois des renforts de colons pour monter à la Rivière Rouge, s'ils en avoient les moyens. Je n'ai pas dit que le gouvernement alloit y envoyer de grandes forces.<sup>(21)</sup>

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(21) *Mr. S.*—Detain or arrest?

*C. D'O.*—Not to arrest. I can not say whether the note was to request him to wait for me, or to order him to remain for me. I was hurried at the time, but I gave no order either to *Mr. Nolin*, or to *Mr. M'Donald*, nor to any other person, before I got to Lake la Pluie, to arrest the prisoner, or detain him by force.

*Mr. Stuart here said, he had finished his cross-examination, but begged the Court to keep captain D'Orsonnens in attendance, as he proposed to examine him on the defence.*

When I gave them the note, I told them to induce De Reinhard to remain there and wait for my arrival. I told them only to induce him to stay, and as I knew the good disposition of the prisoner, I was convinced, that when he saw the proclamation of Sir John Coape Sherbrooke, and received my note, he would remain. When I was going to talk with De Reinhard at the fort, there were some men who followed. I can not tell the precise number, nor whether they were armed or not. They followed afar off, out of curiosity. I arrived at the fort of Lake la Pluie with two men who were armed, and I was armed myself. The others followed a good way off, and I can not say whether they were armed or not. I have neither received nor expected any remuneration from my Lord Selkirk nor from the Hudson's Bay Company. I never said to any person that I expected a remuneration from my Lord Selkirk, nor from the Hudson's Bay Company. I advanced money to Lord Selkirk's people, and to those of the Hudson's Bay Company, out of my own funds, and I have since received back the amount, thirty nine pounds, from Mr. Garden. I received it in one payment by a check on the bank. I received it in this month, between the tenth and the fifteenth, as I believe. It was money advanced on account of wages. I did not say before I came to the Portage of Lake la Pluie, that I had taken Fort William, nor that I had taken other forts, and that I would also take that one. I do not remember to have said at Red River to any person that I was not my own master, and that my departure depended upon my Lord Selkirk. It is possible I may have said so, but it was not of that importance for me to remember it. I had a flag hoisted before my tent at Lake la Pluie, but when I arrived there I had no cannon. I had no artillery mounted till after De Reinhard had made his declaration. After the declaration Mr. Vitche brought me two small pieces of artillery from the Portage. The Portage is a mile and a half distant from Lake la Pluie. It was the fifth or sixth of October. I fully explained to De Reinhard that the men who were with me were not engaged in a military capacity, but as colonists for Red River, and if they declined to take lands at Red River, they had the right of returning to Europe, by way of Hudson's Bay, or of Canada, at their option. A long conversation took place between me, the prisoner, and Mr. Dease, and I said to the prisoner, after his declaration, and it is very possible before the

LOUIS NOLIN, *Sworn.*

*And his Examination continued by the Solicitor General.*

*Louis Nolin.*—Je n'ai pas arrêté ni fait prisonnier de De Reinhard avant sa déclaration. Quand j'étois rejoindre capitaine D'Orsonnens et le prisonnier, ils étoient seuls, et en dehors du fort. Je n'ai pas entendu, avant que De Reinhard a fait sa confession, aucune menace ni aucune promesse de la part du capitaine D'Orsonnens au prisonnier, ni par aucune autre personne, et je n'ai pas fait ni l'une ni l'autre moi même. Quand De Reinhard parloit d'un meurtre qui avoit été commis à la Rivière Winnipic, il a nommé la personne assassinée, Owen Keveny. C'étoit au tems que nous (capitaine D'Orsonnens et moi,) étions dehors nous nous promenans devant le fort. Il parla alors du meurtre de monsieur Keveny, et je l'ai entendu dire que, "Mainville avoit tiré avec un fusil sur monsieur Keveny, et l'avoit blessé à la gorge, ou au cou, et que lui, De Reinhard, l'avoit fini en passant son sabre, une ou deux fois, au travers de son corps."—Il n'a pas fait mention de l'endroit, mais que c'étoit en bas de la Rivière Winnipic. Je n'ai pas entendu plus, je me tenois un peu à l'écart, et

confession, and to Mr. Dease, (for the conversation when I had been in the fort before was general amongst the five,) that I considered that the people of the North-West had committed a great crime in destroying the Red River colony, and that I considered the people who had been active in destroying it, like rebels, or even that they were in fact rebels, and that that could not pass without punishment; perhaps also that in the same conversation I may have said that I expected reinforcements of colonists, to go up to Red River, if they had the means of so doing. I did not say that government was going to send a large force there.

le capitaine D'Orsonnens et De Reinhard sont entrés dans la maison avant moi, mais j'y ai entré ensuite aussi. Le lendemain De Reinhard parla encore de cette affaire. Il a parlé volontairement du mort de monsieur Keveny. Il se promenoit seul avec moi sur le bord d'un côté; on se tenoit amicalement sous les bras, et il a parlé volontairement du mort de monsieur Keveny.—Je ne puis pas dire comment commença la conversation. Je ne me rappelle si je l'ai demandé comment cela s'étoit passé. A ce tems je n'ai fait aucune promesse ni aucune menace, ni je ne disois qu'il seroit mieux pour lui de déclarer, ou qu'il seroit puni s'il ne faisoit pas une déclaration, ni aucune chose de même. J'ai dit seulement, "que c'étoit bien de  
 " valeur d'avoir fait une telle chose." Il m'a dit,  
 " que lorsqu'il étoit au Bas de la Rivière, qui est  
 " un endroit dans la Rivière Winnipic, il a entendu  
 " monsieur M'Lellan demander plusieurs fois à  
 " monsieur Grant et à Cadotte de tuer monsieur  
 " Keveny, mais qu'ils ont refusé, et qu'il a aussi  
 " demandé la même chose à lui, mais qu'il a aussi  
 " refusé de tuer monsieur Keveny. Qu'après ce-  
 " la monsieur Keveny fut envoyé prisonnier en  
 " montant la Rivière Winnipic. Que quelques  
 " jours après, il a embarqué lui même avec mon-  
 " sieur M'Lellan, Grant, Cadotte, et d'autres per-  
 " sonnes, au nombre de dix ou douze, dans un ca-  
 " not, et qu'ils ont aussi monté la Rivière Winni-  
 " pic. Qu'en arrivant à un endroit à une petite  
 " distance de l'endroit appelé les Dalles, ils se sont  
 " arrêtés, et après que lui, De Reinhard, avec  
 " Mainville et le fils de Perdrix Blanche, se sont  
 " embarqués de là dans un petit canot pour aller  
 " là où étoit Keveny, et qu'en allant là, c'étoit pour  
 " aller tuer Keveny, parceque dans ce moment là,  
 " Mainville s'étoit déterminé de tuer Keveny.  
 " Qu'ils ont été à lui, et ont fait embarquer Keve-

"ny dans leur canot, et qu'ayant fait une petite distance, Keveny a demandé à débarquer ou à aller à terre, et quand il étoit pour se rembarquer Mainville a tiré un coup de son fusil sur Keveny, et l'a blessé sur le cou, et que lui, De Reinhard, voyant que Keveny étoit blessé à mort, a enfoncé son sabre, une ou deux fois au travers de son corps; et il ajouta qu'il l'avoit fini ou achevé;" les mots étoient, "et je l'ai fini." Il ne m'a pas dit ce qu'ils avoient fait du corps, excepté qu'ils l'avoient laissé là sur une petite pointe de pierre ou galets.—En 1817, j'ai campé à la distance d'environ un arpent de l'endroit où De Reinhard m'avoit dit qu'ils avoient laissé le corps de Keveny.<sup>(22)</sup>

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(22) I did not arrest, nor make prisoner of De Reinhard, before his declaration. When I went to join captain D'Orsonnens and the prisoner, they were alone, and outside of the fort. I did not hear, before De Reinhard made his confession, any threat or any promise on the part of captain D'Orsonnens to the prisoner, nor on the part of any other person, and I made neither the one nor the other myself. When De Reinhard spoke of a murder that had been committed at the River Winnipic, he named the person murdered, Owen Keveny. It was at the time when we, (captain D'Orsonnens and myself) were outside, walking in front of the fort. He then spoke of the murder of Mr. Keveny, and I heard him say that "Mainville had fired a gun at Mr. Keveny, and had wounded him in the breast or neck, and that he, De Reinhard, had finished him, by passing his sword once or twice through his body." He did not mention the spot, but that it was in the lower part of the River Winnipic. I did not hear any more, I kept a little aloof, and captain D'Orsonnens and De Reinhard entered the house before me, but I afterwards went in also. On the following day De Reinhard again spoke of this affair. He spoke voluntarily of the death of Keveny. He was walking alone with me on the brow of a hill; we were walking arm in arm in a friendly way, and he spoke voluntarily of the death of Mr. Keveny. I can not say how the conversation began. I do not recollect whether I asked him how it happened. At that time I made neither any promise nor any threat, neither did I say that it would be better for him to make a declaration, or that he would be punished if he did

*Chief Justice Sewell.*—Allow me, Mr. Solicitor, to put one question to him. Par l'information que De Reinhard vous a donnée, compreniez vous l'endroit où le corps de Keveny étoit laissé ?

*Louis Nolin.*—Oui, d'après la déclaration de De Reinhard j'ai bien compris, de ma propre connoissance, l'endroit où le meurtre avoit été commis, parceque j'avois passé la Rivière Winnipic une ou deux fois auparavant, et je me formois, d'après son information, une bonne idée de l'endroit où cela pouvoit avoir arrivé. Il m'a dit que c'étoit en haut des Dalles, mais il ne m'a pas dit à quelle distance des Dalles, ni de quel bord de la rivière.

not make a declaration, nor any thing of the kind. I only said that "it was a serious matter to have done such a thing." He told me that, "when he was at Bas de la Rivière, which is a place in the River Winnipic, he heard Mr. M'Lellan several times ask both Mr. Grant and Cadotte, to kill Mr. Keveny, but that they refused it, and that he also asked the same thing of him, but that he too had refused to kill Mr. Keveny. That after this Mr. Keveny was sent away as a prisoner up the River Winnipic. That some days after, he himself embarked with Mr. M'Lellan, Grant, Cadotte, and other persons, to the number of ten or twelve, in a canoe, and that they also ascended the River Winnipic. That on arriving at a place, situated a short distance from the spot called the Dalles, they stopped, and afterwards that he, De Reinhard, with Mainville, and the son of the White Partridge, had embarked from there in a little canoe, to go where Keveny was, and that their going there was with the intention of killing Keveny, because at that time, Mainville had come to a determination to kill Keveny. That they went to where he was, and made Keveny get into their canoe, and that, when they had got a little distance, Keveny asked to land or to go on shore, and when he was going to reembark, Mainville fired his gun at Keveny, and wounded him in the neck, and that he, De Reinhard, seeing that Keveny was mortally wounded, ran his sword once or twice through his body; and he added that he had finished, or done for him;" the words were, "and I finished him." He did not tell me what they did with the body, excepting that they had left it there on a small stony or rocky point. In 1817, I encamped at the distance of about an arpent from the place where, as De Reinhard had told me, they had left Keveny's body.

*Solicitor General.*—Avez vous parlé avec les Sauvages de cet endroit?<sup>(23)</sup>

*Mr. Stuart.*—I object to that, it is not evidence, no conversation with a third person in the absence of the prisoner can be made evidence.

*Solicitor General.*—I was not about to ask him as to a conversation with any particular Indian. I meant to ask him whether, according to general repute, this was not the spot where Keveny was killed, and we are then going on to shew that at this very spot the remains of a body were found, which I should consider circumstances proper to go to the jury.

*Chief Justice Sewell.*—You certainly may ask him on which side of the river the remains of a human body were found, because it is in evidence that it was on the south bank of the river, that the death took place, but upon the vague testimony of a parcel of wandering Savages, it is hardly worth while to have an altercation about general repute, for what can it possibly amount to? what dependence can be placed upon testimony so extremely loose, that I consider it would really be a waste of time to us all to attempt to go into it?

*Solicitor General.*—I submit to your honour's decision, as I always will, and as on all occasions

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<sup>(23)</sup> *C. J. S.*—By the information which De Reinhard gave you, could you make out the place where the body of Keveny had been left.

*L. N.*—Yes, by De Reinhard's declaration I could well make out, from my own knowledge, the spot where the murder had been committed, because I had passed through the River Winnipic once or twice before, and, in pursuance of his information, I could form a good idea of the spot where it must have happened. He told me that it was above the Dalles, but he did not say at what distance from the Dalles, nor on which side of the river.

*S. G.*—Did you speak with the Indians about that place?



it is my duty to do, but the question I proposed to put to the witness was merely designed to lead to an enquiry that I consider will exhibit a strong corroborative circumstance, namely, that at the spot where, according to general repute, Keveny met his death, and was, according to the prisoner's confession, left, the bones of a human being were found.—I shall proceed to examine the witness relative to the bones.

*Mr. Stuart.*—I beg to contend that the evidence wished to be produced by Mr. Solicitor General is totally inadmissible, as I shall shew to the Court that it is that sort of evidence which may prejudice, but can not enlighten, those who are ultimately to decide the point at issue between the Crown and the prisoner at the bar. What can the Crown officers expect to prove by, as it was correctly designated by your honour, this vague testimony. The finding of some bones, when the side of the river is not proved, when it is not known where the alleged death took place, except that it was in a country where accidents of one kind and another are daily producing catastrophes which lead to it, and which of itself is a strong reason against receiving such equivocal evidence. Numerous must be the remains of human bodies found in an uncivilized, wild, and boundless country, on the borders of rivers, which, it can be proved, have been navigated for upwards of a hundred years, rivers which, from their rapids, expose the voyagers to those hazards which must frequently be attended with the sacrifice of their lives. Till evidence is offered that these are positively the remains of Keveny, which I imagine, with all the ingenuity which my learned friends possess, they will not be able to do, I should hope that your honours will not suffer them to go into evidence, which, I repeat, is only

calculated to prejudice without enlightening, and therefore, in my humble opinion, ought to be most scrupulously kept from the jury.

*Solicitor General.*—I think we have shewn quite sufficient to entitle us to go into this evidence, which is certainly corroborative of the confession already in evidence before the jury, and if this should, (as I expect it will,) be decided by your honours, to be admissible evidence to go to the jury, I have no doubt that there will be then but one opinion of the weight, as secondary testimony, which it ought to have in the unavoidable absence of that primary evidence, which I admit it is always desirable to produce, but which sometimes, as in this case, it is impossible to produce. We have exhibited a confession from the prisoner, when, conscience-struck, his remorse was such that he became a self-accuser, a circumstance of itself strong enough to warrant the conviction of the prisoner. The confession being admissible evidence, there can, I imagine, be little difficulty in declaring that any thing having a tendency to corroborate that confession, must also be admissible. The question then is, does the fact of finding the bones of a human being at the spot where the prisoner stated that after killing Keveny, he was left by those who committed the murder, and which common repute fixed as his burial place, the fact being proved, what weight it ought to have is with the jury: I contend it is admissible evidence, and I repeat that I believe there will be but one opinion what weight it ought to have.

*Mr. Vanfelson.*—Il me semble que les officiers de la Couronne auroient du prouver que monsieur Keveny est véritablement mort, avant qu'ils parlent des os. La première question au témoin doit être, "aviez vous connoissance de monsieur Keveny?" savez-vous qu'il est mort? Si le témoin

répond qu'oui; donc, si on peut, qu'on prouve que ce corps est absolument le corps de Keveny, car la confession n'est pas suffisante, et je produis l'autorité d'un juge le plus savant et humain, le juge Hale, en confirmation de cette maxime <sup>(24)</sup> "I have often known says that venerable and benevolent judge, (I am now quoting from MacNally, chapter 6, rule 8, page 41, who refers to Hale P. C. 284,) "I have often known the prisoner disown his confession upon his examination before the justice, and be sometimes acquitted against such his confession." Il y a un cas qui est tout-à-fait en point; dans l'espérance de grâce, une confession avoit été faite d'un meurtre, et sur icelle les personnes accusées furent malheureusement exécutées; pendant que quelques ans après, l'homme se trouvoit en vie. Mon savant confrère, monsieur le Solliciteur Général dit, que les sauvages ont dit au témoin qu'ici Keveny avoit été enterré. Ensuite, je soumets que les sauvages auroient été la meilleure évidence, et, pour cette raison, que l'évidence secondaire ne pouvoit pas être admise, sans que les officiers de la Couronne fassent voir que les sauvages ne sont pas sous la juridiction de cette cour. <sup>(25)</sup>

<sup>(24)</sup> It appears to me that the officers of the Crown ought to have proved that Mr. Keveny is really dead, before they talk of his bones. The first question to the witness ought to be, "had you any knowledge of Mr. Keveny? do you know whether he is dead?" if the witness answers yes, then, if you can, prove that this body is in fact the body of Keveny, for the confession is not sufficient, and I produce the authority of one of the most learned and humane of our judges, judge Hale, in confirmation of this maxim.

<sup>(25)</sup> There is a case which is exactly in point. In the hope of pardon a confession had been made of a murder, and upon this the persons accused were unfortunately executed, whilst, some years afterwards, the man was found to be alive. My learned brother, Mr. Solicitor General says, that the Indians told the witness, that here Keveny had been buried; here-

*Chief Justice Sewell.*—Every case of law must necessarily turn upon its own peculiar circumstances, that is to say, on those peculiarities which are more or less presented in every case which occupies the attention of the Crown, for example, a murder having been committed in a populous city, like London for instance, it would certainly be a very suspicious circumstance if positive testimony of the death was not produced. When I speak of positive testimony of the death, I mean that positive evidence which results from the body having been seen and recognised, subsequent to the death, but in a forest remote and extensive like this, we can not have, and ought not to expect, that exactitude of proof. It is totally impossible that it should be produced, and appears to me unreasonable that it should be expected; thus situated, we are compelled to resort to secondary evidence, and abandon the primary. The rule undoubtedly is, that the secondary evidence shall not be admitted, if it can be fairly inferred that better might have been produced. What are the circumstances under which this question presents itself to us at this moment? here is a man left for dead at a spot described in the prisoner's confession, and by some of the wandering Savages of that immense territory. There is no probability shewn, on the part of the defence, that they were known to the officers of the Crown, or that, by any exertion made by them, these Savages could have been found. What fact is it the Crown wishes to prove by this secondary evidence, under circumstances so peculiar, that, as

fore, I submit, that those Indians would be the best evidence, and for that reason, that secondary evidence could not be admitted until the officers of the Crown made it appear that these Indians are not within the jurisdiction of this Court.

they say, they are incapable, and that without any fakes on their part, of proving by that primary testimony which, we all agree, it is extremely desirable should be adduced in cases of murder? it wishes to add to three separate confessions, (that is, if true,) this additional circumstance, that on the spot where the death is said to have taken place, this witness found a body. We have in evidence, first, his declaration to La Pointe immediately after the supposed commission of the crime; secondly, to captain D'Orsonnens, as detailed so particularly in his evidence; and a third confession to this witness, on the day following that on which he had made his declaration to captain D'Orsonnens, a confession made in these remarkable words, "*je l'ai fini.*" After three separate confessions, to three different persons, he at last points out the spot where he says the body was left. By this witness it is wished to identify that at a place, which, at the time De Reinhard described where the body was deposited, the witness supposed to be the spot, he subsequently examined, and found there a dead body. If the body so found can be proved to be of the size of Keveny, or that there are any other circumstances leading to a belief that it was the remains of Keveny, they may, at the back of these several confessions, perhaps be considered as strengthening the case. If, however, the Crown only wish to prove the finding of a body by the side of the River Winnipeg, it will probably not go for much. From the evidence offered by the Crown officers, if the jury infer that Keveny is dead, it does not necessarily follow that the prisoner at the bar killed him, the evidence, at the utmost, can go for nothing more than that it may lead the jury to infer that Keveny is dead. I can not see that any legal objection can be made to the question proposed by the

Solicitor General. Here is a fact that a body was found; what additional circumstances, connected with the finding, may be in their possession, it is not for us to anticipate, but the present is, I think, a fair question, and my learned brother agrees with me in opinion.

*Examination resumed by the Solicitor General.*

*Louis Nolin.*—Je savois, quand nous étions campés là, que c'étoit à peu près l'endroit, mais je ne savois pas alors que c'étoit si près, et l'endroit s'accordoit avec la description que le prisonnier m'en a donnée. C'étoit une pointe avec des pierres ou galets, avec de très grosses roches, mais la plus grande partie étoit un galet. C'étoit à main gauche, en montant la rivière Winnipic vers le Lac la Pluie, et à main droite en descendant au Lac Winnipic. Des sauvages venoient à notre encampement, et je les ai demandé où étoient les os de Keveny; ils m'ont dit que c'étoit bien près, et m'ont mené à une pointe de pierres, où j'ai trouvé les os d'un homme, à ma croyance. Les os que j'ai vus étoient dans un tas, et couverts de branches et de feuilles, que les sauvages ont élevé, et j'ai vu des os comme les os des bras et des jambes d'un homme. Je ne les ai pas remués, les os, mais en autant que je m'y connois, ils étoient les os d'un homme. J'ai vu une partie de la tête. Je ne puis pas donner des détails s'ils étoient les os d'un grand homme. Il y avoit aussi une petite croix de bois, mise par les sauvages pour marquer que le corps d'un blanc étoit là.<sup>(26)</sup>

<sup>(26)</sup> I knew, when we were encamped there, that it was near the spot, but I did not know then that it was so near as it proved, and the spot agreed with the description which the prisoner had given to me of it. It was a point of land with stones, or smooth rocks, with very large stones, but the greatest part

*Attorney-General.*—Does not your honour think that we might now be permitted to go into evidence, and shew, that, according to general report, these were the bones of Keveny. I humbly conceive that any thing that is matter of general repute we might shew, and that it is admissible evidence to go to the jury.

*Chief Justice Sewell.*—I think not, Mr. Attorney-General; the fact you have, and it shall go to the jury undoubtedly, that there were bones found at the spot where the prisoner in his confessions, stated they had left the body. The jury, having these facts before them, will make what inferences from them they think proper, but, beyond this I do not think you either ought to be permitted, or is there occasion for you, to go.

*Mr. Justice Bowen.*—You certainly have now as strong a case as possible, I can not see for what you wish to go any farther.

*Chief Justice Sewell.*—Such a case certainly as never came before a Court to my knowledge.

*The Court adjourned for half an hour, Mr. Nolin's word being taken that, in the interval, he would not communicate with any one on this subject of this trial. The Court having re-assembled, the jury were*

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was a smooth rock. It was on the left hand going up the River Winnipic towards Lake la Pluie, and on the right hand descending the river to Lake Winnipic. Some Indians came to our encampment, and I asked them where the bones of Keveny were; they told me that it was very near, and they took me to a stony point, where I found the bones of a man, according to my belief. The bones which I saw were in a heap, and covered with branches and leaves which the Indians had heaped up, and I saw bones like the arm and leg-bones of a man. I did not move them, the bones, but to the best of my knowledge they were the bones of a man. I saw part of the skull. I can not give any details whether they were the bones of a tall man. There was also a small wooden cross, placed there by the Indians, to denote that the body of a white man was there.

*called and being present, Mr. Nolin was again called and cross examined by Mr. Vanselson.*

*Louis Nolin.*—En 1816, j'étois au fort du Lac la Pluie, au commencement du mois d'Octobre, avec monsieur M'Donald, avant l'arrivée de capitaine D'Orsonnens. J'ai quitté le capitaine D'Orsonnens avec M'Donald à la distance de vingt-cinq ou trente lieues avant d'arriver au fort du Lac la Pluie. J'ai reçu un billet de capitaine D'Orsonnens adressé à Charles De Reinhard, le prisonnier a la barre. Je ne sais pas s'il étoit cacheté ou non, et je n'en ai pas examiné le contenu. Capitaine D'Orsonnens ne m'a pas donné des ordres, si De Reinhard ne vouloit pas attendre, de l'arrêter, ou le détenir par force; il m'a dit seulement de l'induire à rester au fort jusqu'à son arrivée. Il y avoit dans le canot avec moi et M'Donald cinq autres, dont trois étoient armés de fusils Américains, mais non pas les autres. Les fusils Américains sont de plus gros calibre que les fusils de chasse ou de traite. C'étoit monsieur M'Donald qui a livré la lettre ou billet de capitaine D'Orsonnens à De Reinhard, au fort du Lac la Pluie, et j'étois avec lui. Je suis entré au fort, accompagné de monsieur M'Donald seulement, ayant laissé nos hommes à une certaine distance où nous avions couché.—Je n'ai vu dans le fort, et à l'entour, que sept ou huit, peut-être neuf, hommes. Le tout que j'ai vu dedans le fort, à ce que j'ai entendu dire, étoient, un nommé Sayer, De Reinhard, et deux autres; Roussin en étoit un, mais je ne sais pas que l'autre étoit nommé Chrétien. Je suis arrivé au matin, et capitaine D'Orsonnens arriva, comme je crois, l'après midi du même jour. Il arriva au fort seul, avec monsieur Dease. J'ai été avec De Reinhard, Sayer, et Roussin au devant de lui. J'étois alors au service de la Compagnie de la Baie d'Hudson, et M'Donald



aussi. Je ne sais pas si le capitaine D'Orsonnens a toujours dit qu'il n'étoit pas au service de la Compagnie d'Hudson's Baie, ni de Milord Selkirk, et je crois qu'il étoit là pour voir le pays, comme compagnon de Milord Selkirk, et que son idée étoit d'aller au Lac Supérieur seulement. Je crois qu'il portoit son sabre sur lui. Il n'avoit pas d'uniforme, c'étoit un surtout gris qu'il portoit; un vieux surtout gris militaire. Capitaine D'Orsonnens arriva au fort seul, mais nous pouvions voir du fort les personnes qui sont venues avec lui. Ils étoient campés à quelque distance, mais on les a vu du fort. Monsieur Sayer et moi ont parlé en présence de De Reinhard des difficultés entre les compagnies, et de l'arrivée d'un canot appartenant à la Compagnie de la Baie d'Hudson. Je me souviens d'avoir entendu De Reinhard dire, avant l'arrivée du capitaine D'Orsonnens, " qu'il étoit bien " fâché que Milord Selkirk avoit pris le Fort William, parceque son équipement y étoit." Je me souviens qu'à l'arrivée du capitaine D'Orsonnens, qu'il parloit, mais je ne puis pas dire à ce moment ce qu'il a dit; mais je me rappelle qu'il a dit que plusieurs messieurs du Nord-Ouest avoient été pris et envoyés à Montréal, pour souffrir leur procès, mais je ne me rappelle pas qu'il a parlé de trahison, ou de rebelles, ni si c'étoit avant ou après la conversation tenue par De Reinhard avec le capitaine D'Orsonnens dont j'ai parlé auparavant, parcequ'au tems je parlois avec Sayer. Je n'ai jamais connu Keveny, et je n'avois jamais entendu parler de lui avant ce tems là. Il est assez fréquent d'enterrer les voyageurs le long du chemin. Il y a plusieurs tombes sur les rives de la Rivière Winnipic, marquées par des croix pour indiquer des tombes de blancs. Là où j'ai vu les os, je n'ai vu que cette seule croix. Il n'y a point de chûtes là, et elles sont ordinairement là où il y

a des rapides ou chûtes. Je n'ai jamais entendu parler que quelqu'un avoit péri là, et comme il n'y a pas de rapides, ce n'est pas un endroit dangereux. Le corps n'étoit pas enterré là, parcequ'il n'y avoit pas de terre dans cet endroit, il étoit seulement couvert de branches et de feuilles, à la façon des Sauvages.<sup>(27)</sup>

(<sup>27</sup>) In 1816, I was at the fort of Lake la Pluie, in the beginning of the month of October, with Mr. M'Donald, before the arrival of captain D'Orsonnens. I left captain D'Orsonnens with M'Donald at the distance of about twenty five or thirty leagues before coming to the fort of Lake la Pluie. I took a note from captain D'Orsonnens addressed to Charles De Reinhard, the prisoner at the bar. I do not know whether it was sealed or not, and I did not examine the contents. Captain D'Orsonnens gave me no orders, if De Reinhard would not wait for him, to arrest, or detain him by force : he only told me to induce him to stop at the fort till he arrived. In the canoe with me and M'Donald there were five others, of whom three were armed with American guns, but not the others. American guns are of a larger bore than hunting or trading guns. It was Mr. M'Donald who delivered captain D'Orsonnens's letter or note to De Reinhard at the fort of Lake la Pluie, and I was with him. I entered the fort accompanied by Mr. M'Donald alone, having left our men at a certain distance, where we had passed the night. I did not see, in the fort and about it, more than seven or eight men, perhaps nine. All that I saw inside the fort were, as I understood, one named Sayer, De Reinhard, and two others. Roussin was one of them, but I do not know that the other's name was Chretien. I arrived in the morning, and captain D'Orsonnens arrived, as I believe, in the afternoon of the same day. He arrived at the fort alone, with Mr. Dease. I went with De Reinhard, Sayer and Roussin, to meet him. I was then in the service of the Hudson's Bay Company, and M'Donald also. I do not know that Captain D'Orsonnens always said that he was not in the service of the Hudson's Bay Company, or of Mylord Selkirk, and I believe that he was there to view the country, as a companion to Mylord Selkirk, and that his idea was to go no farther than Lake Superior. I believe he wore his sword. He had no uniform, it was a grey great coat that he wore; an old military great coat. Captain D'Orsonnens came to the fort alone, but we could see the persons who came with him from the fort. They were encamped at some distance, but they were seen from the fort. Mr. Sayer

*In answer to a question from Mr. Justice Bowen.—*  
 Les Sauvages enterrent ordinairement leurs morts bien en avant dans la terre, à cinq ou six pieds.—  
*And then continued.* J'avois passé deux fois dans la Rivière Winnipic, deux fois auparavant que la déclaration de De Reinhard fut faite.<sup>(21)</sup>

JACOB VITCHIE, *Sworn.*

*Examined by the Attorney-General.*

*Jacob Vitchie.*—J'ai été aux territoires Sauvages. Je connois le prisonnier à la barre, et je connois le capitaine D'Orsonnens. Je n'étois pas présent à la conversation entre le capitaine D'Orsonnens et

and I talked in De Reinhard's presence, of the differences between the companies, and of the arrival of a canoe belonging to the Hudson's Company. I recollect having heard De Reinhard say, before the arrival of captain D'Orsonnens, "that he was sorry Mylord Selkirk, had taken Fort William, because his equipment was there." I remember that, when captain D'Orsonnens arrived, he said some thing, but I can not at this moment say, what he talked of, except that he said that several gentlemen of the North-West had been taken and sent to Montreal to undergo their trials, but I do not recollect that he spoke of treason, or of rebels, nor whether it was before or after the conversation with De Reinhard held with captain D'Orsonnens which I mentioned before, because at the time I was conversing with Sayer. I never knew Keveny, and I never heard him mentioned before that time. It is very common to bury voyageurs along the road. There are several graves on the banks of the River Winnipic, distinguished by crosses, to indicate that they are the graves of whites. Where I saw the bones, I saw only that single cross. There are no falls there, and they are generally in places where there are rapids or falls. I never heard talk of any one who had perished there, and as there are no rapids, it is not a dangerous place. The body was not interred because there was no soil there, it was only covered with branches and leaves, in the Indian fashion.

<sup>(21)</sup> The Indians generally bury their dead very deep in the ground, five or six feet.—I had passed twice through the river Winnipic, twice before De Reinhard's declaration was made.

le prisonnier. Je suis arrivé au portage du Lac la Pluie trois jours après le capitaine D'Orsonnens. Le prisonnier m'a parlé au portage du Lac la Pluie, et le capitaine D'Orsonnens étoit là. Lors de mon arrivée, De Reinhard m'a dit qu'il étoit prisonnier pour la mort de Keveny. C'étoit le même jour. Le soir je l'ai entendu moi-même dire à nos hommes, les hommes de notre brigade, qu'il avoit connoissance de la mort de Keveny, et il a raconté comment cela s'est passé; qu'il a reçu ordre de monsieur Archibald M'Lellan de tuer Keveny.<sup>(20)</sup>

*Chief Justice Sewell.*—I do not think, Mr. Attorney-General, that this evidence will do. It is impossible that this witness can say, that amongst this mass of people no promise, or menace, or undue influence, had been used.

*Attorney-General.*—I should conceive I am entitled to prove his general confession. I should suppose it would not be objected to. It is sufficient for me that the witness made him no promise, or used undue influence.

*Chief Justice Sewell.*—Undoubtedly if you go to any particular conversation held between a witness and a prisoner, it would be all that could be required. But I can not allow a witness to go into evidence of a general statement inculcating the prisoner, made before such a number of people

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<sup>(20)</sup> I have been in the Indian territories. I know the prisoner at the bar, and I know captain D'Orsonnens. I was not present at the conversation between captain D'Orsonnens and the prisoner. I arrived at the portage of Lake la Pluie three days after captain D'Orsonnens. The prisoner spoke to me at the portage of Lake la Pluie, and captain D'Orsonnens was there. At the time of my arrival De Reinhard told me that he was a prisoner on account of the death of Keveny. It was the same day. In the evening I heard him myself say to our men, the men of our brigade, that he knew of the death of Keveny, and he related how that event had taken place; that he had received orders from Mr Archibald M'Lellan to kill Keveny.

that it is quite impossible the necessary preliminary questions can be answered.

*Examination continued by the Attorney-General.*

*J. Vitchie.*—Le lendemain j'ai parlé moi-même particulièrement avec lui. Il m'a dit qu'il étoit adonné par monsieur Archy—<sup>(30)</sup>

*Mr. Stuart.*—I rise to object to this testimony being gone into; it is in evidence that he was a prisoner at the time of the conversation, and consequently not in a situation to make any thing he might say evidence against himself.

*Chief Justice Sewell.*—Surely you do not offer that as an objection. Is not every man a prisoner in the hands of the law, that he may be brought to justice, and if, as is generally the case with confessions, he then confesses, is it to be urged against receiving his confession, that at the time of making it, he was in a situation to be brought to justice: most assuredly not.

*Mr. Stuart.*—This was an illegal imprisonment, a state of duress, from which he had no right to expect any law, but the will of those who thus imprisoned him; a very different situation certainly to that of a confession made in the police office below. De Reinhard étoit prisonnier, n'est-il pas?

*J. Vitchie.*—Il n'étoit pas aux arrêts.

*Attorney-General.*—Il n'étoit pas aux arrêts. Mangeoit-t-il avec vous, et couchoit-il?

*J. Vitchie.*—Oui, il mangeoit et couchoit avec moi: il alloit et revenoit.

*Mr. Stuart.*—Parfaitement libre, comme vous et les autres?

*J. Vitchie.*—Il alloit et revenoit comme les au-

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<sup>(30)</sup> The next day I had a particular conversation with him myself. He told me that he had been instigated by Mr. Archy—

tres. Mais capitaine D'Orsonnens nous disoit de surveiller De Reinhard, qu'il ne se sauroit pas.

*Chief Justice Sewell.*—Monsieur Vitchie, avez-vous fait aucune promesse, ou aucune menace, pour l'induire à faire les déclarations que vous allez nous raconter?

*J. Vitchie.*—Non, monsieur, point de tout. Le prisonnier et moi nous étions auparavant du même régiment, et nous nous promenions ensemble, et je l'ai demandé comment cela s'étoit passé, parlant de la mort de Keveny.<sup>(21)</sup>

*Mr. Stuart.*—Am I to understand that the Court decide that a confession of murder made under a state of illegal duress is a good confession, and proper evidence to go the jury.

*Chief Justice Sewell.*—No, Mr. Stuart, not a confession made under illegal duress, it was perfectly legal. A man, confessing that he had committed a murder, can not be illegally confined. Any of the king's subjects have a right, nay are bound, to secure him, so that he may be brought to justice. What objection can you offer to such indubitably good evidence being received?

*Mr. Stuart.*—I only wish the decision of the Court, I do not wish to argue the point.

<sup>(21)</sup> *Mr. S.*—De Reinhard was a prisoner, was he not?

*J. V.*—He was not under arrest.

*A. G.*—He was not under arrest. Did he take his meals with you, and sleep?

*J. V.*—Yes, he took his meals, and slept with me; he went and came.

*Mr. S.*—Perfectly at liberty, like you and the others?

*J. V.*—He went and came like the others, but captain D'Orsonnens told us to watch De Reinhard that he might not escape.

*C. J. S.*—Mr. Vitchie, did you make any promise, or any threat to induce him to make the declarations which you are going to relate to us.

*J. V.*—No Sir, not any; the prisoner and I belonged formerly to the same regiment, and we were walking together, and I asked him how it had happened, speaking of the death of Keveny.

*Chief Justice Sewell.*—After a confession of having committed a murder, it could not be illegal in any person to secure his person, which would put him undoubtedly in a state of duress or surveillance, but this case is abundantly stronger, for under the proclamation of Sir John Coape Sherbrooke, it was made the bounden duty of "all His Majesty's subjects, civil and military, to make diligent enquiry and search, to discover and apprehend all persons who have been, or shall be, guilty of any such crimes and offences as aforesaid, (of which murder was one,) or any other crimes and offences," for the very purpose for which this prisoner was in a state of duress, namely, "that they might be dealt with according to law." After the confession, therefore to captain D'Orsonnens, it could not be an illegal duress that was imposed upon him.

*Mr. Justice Bowen.*—Nor would it have been illegal, if there had been no proclamation.

*Mr. Stuart.*—I only wish to know if it is the opinion of the Court, if made under illegal duress, it is a good confession? we know where a felony is committed in sight of a person, that he is not only at liberty to take up the offender, but the restraint thereby imposed on the individual is perfectly legal. But, in this case, the felony was not so committed, nor is there any evidence adduced to prove its being perpetrated at all, except confessions made under, what we contend was, a state of illegal duress.

*Chief Justice Sewell.*—Mr. Stuart, we have already repeatedly decided the question, and we regret that you should put it again. We have got the whole down, and it must go to the jury, who will give to it whatever degree of credit they think it merits.

*Examination continued by the Attorney-General.*

*J. Vitchie.*—De Reinhard m'a dit "qu'il avoit reçu ordre de monsieur Archy M'Lellan de tuer, ou faire tuer, monsieur Keveny. Que Keveny fut embarqué avec lui, et un nommé Mainville, et un sauvage, dont il ne m'a pas donné le nom, dans un petit canot, dans la Rivière Winnipic, et que quand ils sont arrivés à un certain endroit où Keveny a débarqué, Mainville avoit tiré un coup de fusil, et que lui, De Reinhard, l'avoit achevé avec son sabre." Je ne me rappelle si c'étoit lorsqu'il débarquoit, ou lorsqu'il embarquoit, que Mainville a fait feu avec son fusil sur Keveny, et il ajouta que lui, De Reinhard l'avoit achevé avec son sabre, pour l'empêcher de souffrir, et il m'a dit aussi que le corps a resté là sur la grève. Je ne l'ai pas demandé si le corps a tombé dans le canot ou non, ni si le corps avoit été laissé nud. J'ai vu, en remontant la rivière, passant à la Rivière Rouge, vers l'endroit dans la Rivière Winnipic appelé les Dalles, sur des roches, une croix. Notre guide nous a dit, c'est le croix de Keveny. <sup>(22)</sup>

(22) De Reinhard told me that "he had received orders from Mr. Archy M'Lellan to kill Keveny, or cause him to be killed. That Keveny was embarked with him, one named Mainville, and an Indian, whose name he did not give me, in a small canoe, in the River Winnipic, and that when they had come to a certain place where Keveny went on shore, Mainville fired his gun, and that he, De Reinhard, had finished him with his sword." I do not recollect whether it was, when he landed, or when he reembarked, that Mainville fired his gun at Keveny, and he added that he, De Reinhard, had finished him with his sword, to hinder him from suffering, and he told me likewise that the body was left on the beach. I did not ask him whether the body had fallen into the canoe or not, nor whether the body had been left naked. I saw, in going up the river, passing to Red River, near the spot in the River Winnipic which is called the Dalles, a cross on some rocks. Our guide told us, "that is Keveny's cross."



*Mr. Vallière de St. Réal.*—That is not evidence, what the guide told him.

*Attorney-General.*—We do not want it, I have done with this witness.

*Cross examination conducted by Mr. Vallière de St. Réal.*

*J. Vitchie.*—J'ai vu plusieurs croix sur la Rivière Winnipic, mais non pas ici. Sur la rivière ils sont de distance en distance, mais non pas ici, et dans l'endroit qu'on appelle en haut des Dalles, je n'ai vu qu'une. Je ne puis pas dire à quelle distance, en haut ou en bas des Dalles, que j'ai vu d'autres croix. De Reinhard m'a dit que le capitaine D'Orsonnens lui avoit envoyé un billet qu'il avoit reçu, mais il ne m'en a pas dit le contenu. Il m'a dit qu'il étoit prisonnier quand je l'ai premièrement vu seul, au portage du Lac la Pluie, mais il ne m'a pas dit quand il avoit été pris. Le capitaine D'Orsonnens étoit considéré comme le chef, et il commandoit notre brigade. Capitaine D'Orsonnens m'a dit qu'il se proposoit d'aller en Suisse par la Baie d'Hudson. Il conduisoit les gens qui vouloient des terres à la Rivière Rouge. Il m'a dit qu'il voyageoit par curiosité seulement, il ne m'a pas dit qu'il avoit le nom de chef. Tout le monde étoit au service du Milord Selkirk, et le capitaine D'Orsonnens les commandoit. Le prisonnier, le troisième ou quatrième jour après que je l'ai vu au portage du Lac la Pluie, m'a dit "qu'il seroit reçu témoin du Roi; qu'il avoit tout avoué au capitaine D'Orsonnens, et qu'il alloit faire autant à Milord Selkirk, espérant d'être reçu témoin du Roi; mais il ne m'a pas dit qu'il a eu aucune conversation avec le capitaine D'Orsonnens, à l'égard de cette espérance." De Reinhard m'a dit qu'il a reçu l'ordre de tuer, ou faire tuer Keve-

ny, mais je ne me rappelle pas qu'il m'a dit en quel endroit il l'avoit reçu. De Reinhard mangeoit toujours avec nous, et le capitaine D'Orsonnens. On parloit souvent à table des messieurs du Nord-Ouest. La conversation ordinaire de capitaine D'Orsonnens et les autres, étoit que leur commerce étoit ruiné, et que les gens alloient être envoyés prisonniers à Montréal, pour faire leur procès. Je ne sais pas si cela fut avant ou après la déclaration que De Reinhard m'a fait. Je ne me souviens pas.

*Chief Justice Sewell.*—A-t-il été dit en présence de Reinhard ?

*J. Vitchie.*—Oui. Je me souviens qu'on disoit ça en présence du prisonnier. Le prisonnier étoit connu comme commis du Nord-Ouest dans le tems. De Reinhard savoit bien que le Fort William avoit été pris par Milord Selkirk au tems que nous sommes arrivés au Lac la Pluie. On n'est pas obligé de passer par Fort William pour aller à Montréal du Lac la Pluie, mais c'est la route ordinaire ; on peut passer par le Fond du Lac, sans passer par le Fort William. Entre le Fort William et le portage du Lac la Pluie, il y a deux cents lieues, à ce que je crois, et il y a beaucoup de rapides entre les deux endroits. Un étranger qui n'y avoit jamais passé, ou qui n'y avoit passé qu'une fois, le trouveroit bien difficile d'aller seul dans ces endroits, et pourroit bien s'écarter. Je connois le nommé Heurter, qui étoit alors engagé du Nord-Ouest. On supposoit qu'il étoit à la Rivière Rouge. Le capitaine D'Orsonnens a dit, devant De Reinhard, que c'étoit dommage qu'un brave homme comme Heurter se trouvoit avec des rebelles, et qu'il falloit tâcher de le ramener. Je ne sais pas si le capitaine D'Orsonnens a donné des ordres à De Reinhard d'écrire une lettre à Heurter, mais je sais que De Reinhard a écrit à ce nommé Heurter,

mais je ne puis pas dire par ordre de qui. Capitaine D'Orsonnens m'a dit d'écrire en bas de la lettre de De Reinhard pour faire savoir que j'étois là, et pour qu'il venoit à nous, aussitôt que nous nous serions rendus à la Rivière Rouge. <sup>(32)</sup>

(32) J. V.—I saw several crosses on the River Winnipic, but not here. On the river they occur from distance to distance, but not here, and in the place which is called above the Dalles, I saw but one. I can not say at what distance either above or below the Dalles that I saw other crosses. De Reinhard told me that captain D'Orsonnens had sent a note to him, which he had received, but he did not tell me what the contents were. He told me that he was a prisoner when I first saw him by himself at the portage of Lake la Pluie, but he did not say when he had been taken. Captain D'Orsonnens was considered as the chief, and he commanded our brigade. Captain D'Orsonnens told me that he intended to go to Switzerland by the way of Hudson's Bay. He conducted the people who wanted to have lands at Red River. He told me that he travelled out of curiosity alone, he did not tell me that he had the title of chief. Every body was in the service of my Lord Selkirk, and captain D'Orsonnens commanded them. The prisoner, on the third or fourth day after I saw him at the portage of Lake la Pluie, told me that, "he believed he should be received as king's evidence; that he had confessed the whole to captain D'Orsonnens, and that he was going to do the same to my Lord Selkirk, hoping to be received as king's evidence, but he did not tell me that he had had any conversation with captain D'Orsonnens relative to such expectation." De Reinhard told me that he had received orders to kill Keveny, or cause him to be killed, but I do not recollect that he told me where he had received such orders. De Reinhard always took his meals with us and captain D'Orsonnens. At table the gentlemen of the North-West were frequently spoken of. The usual conversation of captain D'Orsonnens and the others, was that their trade was ruined, and that their people were going to be sent prisoners to Montreal to take their trials. I do not know if this was before or after the declaration which De Reinhard made to me; I do not recollect.

C. J. S.—Was this said in the presence of De Reinhard?

J. V.—Yes, I remember that it was said in the presence of the prisoner. The prisoner was known to be a North-West clerk at the time. De Reinhard knew very well that Fort William had been taken by my Lord Selkirk, at the time when we arrived at Lake la Pluie. One is not forced to pass by Fort William in going from Montreal to Lake la Pluie, but it is the

*Chief Justice Sewell.*—What is this testimony to tend to? I do not see that it can have any bearing upon this cause.

*Mr. Vallière de St. Réal.*—I intend to prove that the same conduct which was pursued with respect to Heurter, was also adopted to other persons, and that a part of the system by which the commercial rivals of the private prosecutor were attacked, was by seducing their servants, and that the witness, captain D'Orsonnens, was a principal agent in so doing.

*Attorney-General.*—I shall most certainly object to the course proposed to be pursued by the learned gentlemen, and for a very obvious reason, namely, that it can not be evidence. Admitting for a moment, what I by no means allow to be really the case, but admitting for a moment, that he succeeded in proving that captain D'Orsonnens was a man calculated to seduce the servants of what the learned gentleman, very ingeniously, as answering his own purpose, calls a commercial rivalry, what would it amount to, were the fact proved? How would it rebut a charge of murder, how set aside

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usual route; one may go by Fond du Lac, without passing by Fort William. The distance between Fort William and the portage of Lake la Pluie is, I believe, two hundred leagues, and there are many rapids between the two places. A stranger, who had never been that way, or had only gone that way once, would find it very difficult to get on alone in those places, and might easily lose himself. I know the person named Heurter, who was then an engagé of the North-West. He was supposed to be at Red River. Captain D'Orsonnens said, before De Reinhard, that it was a pity such a good fellow as Heurter should be amongst rebels, and that he ought to be brought over. I do not know that captain D'Orsonnens gave orders to De Reinhard to write a letter to Heurter, but I know that De Reinhard did write to the person named Heurter, but I can not say by whose order. Captain D'Orsonnens told me to write at the bottom of De Reinhard's letter, to let him know that I was there, and for him to come to us as soon as we got to Red River.

a confession, made, confirmed, and repeated, over and over again, by the prisoner. If it can not be made evidence, why should the time of the Court be taken up in going into it; for what would it amount to, if my learned friends proved, that the whole of the servants of this commercial rivalry had been seduced by captain D'Orsonnens? certainly nothing.

*Mr. Justice Bowen.*—I think a nearer way of accounting for the conduct of captain D'Orsonnens might be found. An old fellow-soldier had, in his opinion, got into a scrape, and he was desirous of extricating him from it. He writes to him, or causes a letter to be written, apprising him of his danger, and recommending him to avoid the consequences by leaving the service of those who, in captain D'Orsonnens's opinion, would involve him in difficulty. A very natural thing, in my judgement, for him to do towards a fellow-soldier for whom he cherished sentiments of respect, an act very far indeed from being censurable.

*Mr. Stuart.*—We are charged with the defence of the unfortunate prisoner, and are conducting it to the best of our humble abilities. I therefore do hope that the bench will abstain from observations which are calculated to prejudice the case of the prisoner. I am sorry that the more elevated situation of the learned judge deprives the unfortunate man of the advantage which he might have derived from his talents, but as he can not avail himself of that assistance, I do hope the defence will be left in our hands, and that we may be permitted, without interruption from any quarter, to conduct it in our own way, as it is a duty sufficiently arduous, without his case being prejudiced by unfavourable remarks from the bench.

*Chief Justice Sewell.*—Don't say so, Mr. Stuart, there can be no greater odium thrown upon

a judge, than to charge him with prejudicing the case of an unfortunate prisoner. I beg of you, Mr. Stuart, not to repeat such a remark; a remark, as unwarranted, as it is unbecoming. I can not sit and hear such observations, and do not, I beg of you, Mr. Stuart, attempt any thing similar.

*Mr. Stuart.*—I was going merely to state that I conceived the question put by my learned friend to be an extremely proper one, for I do think it extremely essential to shew to the jury, that this was the conduct of the agents of the private prosecutor on all occasions. Captain D'Orsonnens has been asked who was with him at the time that De Reinhard made his confession, he tells you nobody, and he tells you also that he was there a private gentleman, a private-traveller, no way interested in the affairs of the Hudson's Bay Company, or the Earl of Selkirk's views. We now wish to go a step farther, and to let the jury know that this private gentleman, merely travelling for his amusement, employed himself in seducing and debauching the servants of a company, who were the rivals of that company who, whether he was connected with it or not, he was, by his own account, employed in assisting, by superintending the progress of nearly a hundred persons to their settlements. I think if it is only as a matter affecting the credibility of this simple individual, (as he has I think most strangely styled himself,) that it is a very important point for the jury to understand, that his amusement was to write letters to the servants of a company, to which the prisoner at the bar was a clerk, informing them, not merely that they were in bad company, but that their employers were rebels, and traitors to the government, and that all who remained with them would be similarly treated as the pri-

cipals. It is, in my humble opinion, extremely important; they are facts; what weight they may have on the jury I know not, but, to my mind, they are facts completely at variance with the testimony of captain D'Orsonnens, who most explicitly asserted that he was in that country a simple individual, no way connected with the Earl of Selkirk, or either of the rival companies, but in fact a private gentleman, travelling merely for amusement. As evidence affecting the credibility of captain D'Orsonnens's testimony, I can not but consider that we are fully entitled to pursue the course adopted by my learned friend.

*Chief Justice Sewell.*—To a certain extent, you certainly may pursue it, but not into a history of all the circumstances of this unfortunate business. You may ask him, did Captain D'Orsonnens give orders to De Reinhard to write to Heurter? I will put that question to him. *The interrogatory being put in French.*

*J. Vitchie.*—Je ne sais pas si le capitaine D'Orsonnens a donné ordre d'écrire à Heurter, mais il m'a dit d'écrire au bas de la lettre de De Reinhard, pour venir à nous, et se rendre à la Rivière Rouge. <sup>(24)</sup>

*Cross examination resumed by Mr. Vallière de St. Réal.*

*J. Vitchie.*—J'étois à Fort William lors de la prise, le treizième d'Aout, 1816. C'étoit avant ce tems-là dans la possession de la société du Nord-Ouest. <sup>(25)</sup>

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<sup>(24)</sup> I do not know whether captain D'Orsonnens gave orders for writing to Heurter, but he told me to write at the bottom of De Reinhaad's letter, to come to us, and to be at Red River.

<sup>(25)</sup> I was at Fort William at the time of the capture, on the thirteenth of August 1816. Before that time it was in the possession of the North-West Company.

*Question by a Juryman.*—Quel grade aviez vous ?

*J. Vitche.*—J'étois commis au service du Milord Selkirk. Le fort a été pris par force, parcequ'on nous avoit jetté dehors avec notre *warrant*, et tout. Il y avoit un homme avec un bugle, et quelques uns armés de fusils et de bayonettes. Quelques uns avoient des habits rouges, étant soldats dernièrement déchargés. Je pense bien que De Reinhard savoit que Fort William avoit été pris, mais je ne sais pas s'il avoit connoissance de la manière dont il avoit été pris. Dans les conversations de nos hommes, on parloit souvent de la manière devant De Reinhard, mais je ne puis pas dire, pour le certain, si c'étoit avant ou après la déclaration qu'il m'a fait.

*Mr. Vallière de St. Réal.*—Vous l'avez dit qu'il a été pris par force——(36)

*Chief Justice Sewell.*—You have not yet brought it home that these conversations took place before the declaration. Besides, it is no matter to this case how it was taken. You have it in evidence that, to the prisoner's knowledge, the fort was in the possession of the Earl of Selkirk, how it came to be so is of no consequence to the case.

*Mr. Vallière de St. Réal.*—With great deference to the Court, I can not see why we should be allowed to prove a fact in the gross, and then pro-

(36) *Juryman.*—What rank did you hold ?

*J. V.*—I was a clerk in the service of my Lord Selkirk. The fort was taken by force, because we were turned out with our warrant and all. There was one man with a bugle, and some who were armed with musquets and bayonets. Some had red coats, being soldiers lately discharged. I believe that De Reinhard knew that Fort William had been taken, but I do not know whether he was acquainted with the manner in which it was taken. In the conversations of our people they often spoke of the manner in which it had been taken before De Reinhard, but I can not say, for certain, whether this was before or after the declaration which he made to me.



hibited from going into the detail of the same transaction. We have proved that it was in the possession of Lord Selkirk, and taken by violence. We now wish to prove by what species of violence, namely, by armed force, with cannon, &c. and I confess I do not see the difference, or upon what principle it is, the Court refuse to allow us to go into it.

*Chief Justice Sewell.*—I will state the principle, and perhaps you will then see the difference. The principle upon which the Court act is this, that it may be material to prove that the fort was in possession of Lord Selkirk at the time, but it can not be necessary to shew that it was taken with cannon. The substantial fact, that it was in possession of Lord Selkirk, you have. That it was formerly, and is now, occupied by the North-West Company, is matter of public notoriety. These are the substantial facts, and are all that is required, it is of no consequence at all how it was taken.

*Cross examination resumed by Mr. Vallière de St. Réal.*

*J. Vitchie.*—Capitaine D'Orsonnens a dit, devant De Reinhard, qu'en conséquence des difficultés entre Milord Selkirk et les gens du Nord-Ouest, ou pour vider les difficultés entre les compagnies, que, s'il étoit nécessaire, il auroit des troupes du gouvernement, mais je ne sais pas s'il a dit un mille ou dix mille, ou qu'il a mentionné le nombre, ou si c'étoit avant, ou après, la déclaration que De Reinhard m'a fait. J'ai connu De Reinhard long-tems, il étoit bien estimé dans notre régiment. Il étoit un Couleur-Serjeant, et j'étois aussi un Couleur-Serjeant.<sup>(27)</sup>

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<sup>(27)</sup> Captain D'Orsonnens said, before De Reinhard, that in consequence of the disputes between my Lord Selkirk and the

MILES M'DONELL, ESQUIRE, *Sworn,*

*And examined by the Attorney-General.*

*Attorney-General.*—You I believe, Sir, have been in the Indian territory?

*Mr. M'Donell.*—Yes, I have.

*Attorney-General.*—Did you, Sir, know a person named Owen Keveny.

*Mr. M'Donell.*—Yes, I knew Owen Keveny, he passed the winters of 1812 and 1813, with me at Red River.

*Attorney-General.*—Did you, Sir, ever know more than one person in that country of the name of Owen Keveny.

*Mr. M'Donell.*—I never knew but one person of that name, nor indeed of Keveny, except Mr. Keveny.

*Attorney-General.*—How long, Sir, have you been in the Indian territory? I believe you generally reside there.

*Mr. M'Donell.*—I do not know that it is exactly in the Indian territory, but in the territory of the Hudson's Bay Company. I was at Red River from 1812 to 1815.

*Attorney-General.*—Then, had there been any more of the name of Keveny it is most probable, from your knowledge of that country, and its inhabitants, that you must have known them.

*Mr. M'Donell.*—I generally knew the gentle-

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North-West Company, or in order to settle those disputes, he was, if it was necessary, to have troops from government, but I do not know whether he said one thousand or ten thousand, or that he mentioned any number, or whether it was before or after the declaration which De Reinhard made to me. I have known De Reinhard for a long time, he was much esteemed in our regiment. He was a colour-sergeant, and I was also a colour-sergeant.

men residing there during the winter, as I went every summer to York Fort in the Hudson's Bay territory. I was acquainted with all between the River Rouge and York Fort.

*Attorney-General.*—Did Mr. Keveny, Sir, go to England, and when, and has he returned to your knowledge?

*Mr. M'Donell.*—In the autumn of 1813, Mr. Keveny went to England, and I heard that he came out again to the southward, to Fort Albany, but I have not seen him since.

*Mr. Stuart.*—That is no evidence. The witness, I believe, does not even know that he was in England.

*Mr. M'Donell.*—I had a letter from him saying he was on the point of embarking, and I heard afterwards that he had been in England, and that he had returned.

*Mr. Stuart.*—That will not do, he only heard it.

*Attorney-General.*—I do not know that yet. You was, I believe, in England afterwards?

*Mr. M'Donell.*—In 1815, I was taken prisoner by the North-West Company, and sent to Fort William, and afterwards I went to England, and there I heard that Mr. Keveny had returned. I heard it at the Hudson's Bay House from the gentlemen in the office.

*Attorney-General.*—What sort of man, Sir, was Keveny in appearance?

*Mr. M'Donell.*—Mr. Keveny, Sir, was a slender active man, about 5 feet 10 inches or 11 in height, of a fresh complexion, rather young, about thirty I should suppose, with light brown hair. He was a slender man, but very active.

*Attorney-General.*—Do you know the passes on the River Winnipic, and was you ever at the Dalles?

*Mr. M'Donell.*—Yes, I know the passes on the

River Winnipic, and I know the Dalles. In coming from the Red River last July, or the beginning of August, I landed at a place, en haut des Dalles, where I was told that the murder of Mr. Keveny had been committed.

*Attorney-General.*—Did you meet any body at the Dalles who knew Mr. Keveny?

*Mr. M'Donell.*—No, I did not; at the place there are no inhabitants.

*Attorney-General.*—Which side of the river did you land, and what did you see?

*Mr. M'Donell.*—I landed on the left side of the river as you come up, coming towards the Lac des Bois. I was coming up against the stream, and landed on the left hand side. We were shewn, at a few yards distance from the shore, on a point of rock, the skeleton of some person covered with stones and a few branches.

*Attorney-General.*—Was it an entire skeleton of a man?

*Mr. M'Donell.*—I believe there were all the bones of a man. They were asunder, and there was no flesh, but I have no doubt it was a skeleton of a human being. The bones were not extended at length, but put up together; those of the legs and body together in a heap.

*Attorney-General.*—Did you do any thing with them?

*Mr. M'Donell.*—We buried them more, by putting more stones above them.

*Attorney-General.*—Do you think they were the bones of Mr. Keveny, or did you observe any thing that would lead you to think they were not the bones of Keveny?

*Mr. M'Donell.*—I saw nothing that could lead me to think that they were not the bones of Mr. Keveny, on the contrary—

*Mr. Stuart.*—This is mere negative testimony

founded on opinion, and not admissible, I conceive.

*Chief Justice Sewell.*—I don't know that, Mr. Stuart. It is a fact that bones were found. Were they, Sir, the bones of such a man as Keveny was, of a slender man, five feet ten or eleven high?

*Mr. M'Donell.*—They were small bones, and of such a man as Mr. Keveny was. Mr. Keveny was a slender man, but tall, and I took them for his bones.

*Attorney-General.*—Have you, Sir, any doubt that they were his bones?

*Mr. M'Donell.*—I have no doubt that they were his bones.

*Attorney-General.*—What sort of man was Mr. Keveny in his temper and deportment? Was he a violent, or what sort of man?

*Mr. M'Donell.*—Mr. Keveny was a man that could be easily managed, he was a man possessed of a high spirit, and a quick sense of honour; he was quick to resent an insult, but did not give them.

*Attorney-General.*—Was he a strong, athletic man, that would not be able to be managed by one man; by the prisoner for instance?

*Mr. M'Donell.*—I should think one man might easily manage him. I suppose the prisoner to be superior to Mr. Keveny in point of strength.

*Attorney-General.*—Was he a man given to quarrel more than others?

*Mr. M'Donell.*—No, I think not. He was a man who would not put up with an insult.

*Attorney-General.*—Do you know any thing of his quarrelling with the people he brought out to Hudson's Bay?

*Mr. M'Donell.*—I have heard that he quarrelled with the Hudson's Bay people he brought out, but I saw nothing of it. He was not more likely to quarrel than other people. I never had any difference with him.

*Attorney-General.*—You said that you put up a cross—was there any there before, and did you see any other thereabouts?

*Mr. M'Donell.*—I put up a cross; there had been a stick with a wisp of straw across it, according to the Indian manner. I saw no other there. Crosses are generally put at rapids, where people meeting with accidents are buried, but here are no rapids.

*Attorney-General.*—Have you seen the prisoner at the bar before?

*Mr. M'Donell.*—Yes, I have.

*Attorney-General.*—Will you tell us where you saw him, and relate all that passed between you at that interview?

*Mr. M'Donell.*—I left Fort William to go into the interior, that is, to Red River, on the 15th October 1816, to go inland, and about three days after, the prisoner joined us where we were encamped, and said that he had been sent from Fort Lac la Pluie by captain D'Orsonnens, and was on his way to Fort William, to submit himself to Lord Selkirk.

*Attorney-General.*—Did he introduce himself to you?

*Mr. M'Donell.*—He came to my tent, and we spoke together a great deal about affairs in general relating to the North-West.

*Attorney-General.*—Did he tell you that he was a prisoner, or did you see that he was one, was he in confinement?

*Mr. M'Donell.*—He told me afterwards that he was a prisoner, but he did not appear like one. He had a gun and ammunition, and a shot-bag on, he did not appear as a prisoner ought to be.

*Attorney-General.*—Well, Sir, relate all that passed?

*Mr. M'Donell.*—After some time we spoke of

the affairs of the savage territory generally, and amongst others of the massacre in which governor Semple fell, together with his people, by the North-West Company. He then told me that he also had committed some crime, and was then a prisoner on his way to submit himself to Lord Selkirk. I told him I supposed, or believed, that he had nothing, or not much, to apprehend, as I supposed he had not been guilty of such heinous crimes as the massacre at Red River, upon which he said that he also had killed a man belonging to us, and asked me if I would permit him to name him, and I said, yes, certainly.

*Chief Justice Sewell.*—Will you give us the precise words which he used?

*Mr. M'Donell.*—Il disoit; "voulez vous que je vous le nomme," et j'ai repondu, oui.<sup>(22)</sup>

*Attorney-General.*—Whom did he name?

*Mr. M'Donell.*—He named Mr. Keveny.

*Attorney-General.*—Owen Keveny, did he say?

*Mr. M'Donell.*—No, he said Keveny, not Owen Keveny.

*Attorney-General.*—Did he describe him? describe his person?

*Mr. M'Donell.*—No, he did not, I did not ask him, for I was very much affected. He said that Mr. Keveny had come from Hudson's Bay, (he appeared to speak of Mr. Keveny with regret for what he had done,) and that he went with a warrant from Mr. M'Leod to arrest Mr. Keveny, and brought him to the mouth of the River Winnipic, he having been taken by himself and another man, named Casseran, to where M'Leod lived, but he had previously departed for the north, or interior of the country. He said, that at the time of taking Mr. Keveny, there had been a struggle be-

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(22) He said; "shall I name him to you," and I answered, yes.

tween them, (between himself and Keveny,) and as the prisoner told me, the Bois Brûlés, who were with him, would have killed Mr. Keveny, but that he prevented them, saying that he could manage Keveny himself.

*Attorney-General.*—Did the prisoner speak of this as any thing more than an ordinary scuffle?

*Mr. M'Donell.*—He spoke of it as of a scuffle, but not one of great difficulty, only that at first he resisted the execution of the warrant, but that he managed him after a scuffle. He went on to tell me that he was afterwards sent from the place called Bas de la Rivière for Fort William, and that some days after he had been sent away, they received news at Bas de la Rivière, that Fort William had been taken possession of by Lord Selkirk, that thereupon a council was held at Bas de la Rivière, at which it was resolved to dispatch Mr. Keveny rather than he should join Lord Selkirk. He, (De Reinhard,) said that he was present at this council with Mr. M'Lellan. That Mr. M'Donell, Joseph Cadotte, Cuthbert Grant, and some others, whose names I do not now recollect, were also present, and that they divided his effects between them at this council.

*Attorney-General.*—Did he tell you what part he had for his share, as well as who were present?

*Mr. M'Donell.*—No, he did not mention what part of the effects he had. He told me that Mr. M'Lellan, Mr. M'Donell, Mr. Cadotte, and Grant, were present, and that it was held after they received the news that Fort William had been taken, to which place the deceased had been sent, and was then on his passage.

*Attorney-General.*—Did he state to you if any representations were made to him on the subject of the persons supposed to be under Lord Selkirk?

*Mr. M'Donell.*—Yes, he said that they repre-



sented to him, (the prisoner,) that the deceased was a rebel, and that all the persons employed under my Lord Selkirk were rebels, and were acting against the government, and that the greatest mischief might be expected as he had with him papers and plans which might, and would, be ruinous to the North-West Company. He afterwards mentioned being in a canoe with Keveny in company with a man named Mainville and a Savage commonly called José, fils de Perdrix Blanche.

*Attorney-General.*—Have the goodness, Sir, to relate to us what he stated to have passed in the canoe.

*Mr. M'Donell.*—He said that, en haut des Dalles, they landed, and that Mr. Keveny, for some natural occasion, left them, and went a little distance into the woods, and that, during his absence, he spoke to Mainville, saying, that if he, (Mainville,) was desirous, (the words were, “si vous avez envie,”) <sup>(39)</sup> of killing Keveny, that this was a favourable place; upon which, as Keveny was approaching the canoe to reembark, Mainville discharged his gun, shooting him in the neck, and that he, (the prisoner,) ran him twice through the back with his sword to finish him. He also said that, after being wounded, Keveny tried or attempted to speak, but that all he could say was, “you,” adding that he did not suffer long, for that he, (De Reinhard,) immediately put him out of pain. He told me a great deal more which I do not now recollect, but I have related the principal parts of our conversation.

*Attorney-General.*—Did he appear penitent, and express sorrow for what he had done, or account for his conduct?

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(39) If you have a wish.

*Mr. M'Donell.*—He appeared very penitent for what he had done, expressing great sorrow, saying that he had been misled, and that it was through ignorance that he had done it.

*Attorney-General.*—Did he tell you where Keveny fell, and what they did with the body.

*Mr. M'Donell.*—He told me that Mr. Keveny fell just by or upon the canoe, just as he was going to embark, and I do not recollect that he told me what they did with the body; I think he did not.

*It being 6 o'clock, the Court was adjourned until to-morrow at 8 o'clock, A. M. The Chief Justice admonishing Mr. M'Donell that he must not hold communication with any person on the subject of the trial.*

*Tuesday 26th May, 1818.*

PRESENT AS BEFORE.

*The Jury were called over, and being all present, Miles M'Donell, Esq. was cross-examined by Mr. Stuart.*

*Mr. Stuart.*—You can not, I imagine, say positively that the bones you saw, en haut des Dalles, were the bones of Keveny?

*Mr. M'Donell.*—No, I can not swear they were his bones.

*Mr. Stuart.*—Are you sufficient anatomist to know the dimensions of the bones of a man 5 feet 10 or 11, or to distinguish the bones of a man from those of a woman?

*Mr. M'Donell.*—No, I can not say that I am. I should know the bones of a very large man so as to distinguish them from a small one, these

were neither, they appeared the bones of a man rather above the middle size.

*Mr. Stuart.*---Did De Reinhard tell you where the council, of which you have spoken, was held?

*Mr. M'Donell.*---I do not recollect that he said where it was held, but he told me who were there, viz. Mr. M'Lellan, Mr. M'Donell, Mr. Grant, Mr. Cadotte, and others, together with himself.

*Mr. Stuart.*---Are you sure he told you Mr. M'Donell was there?

*Mr. M'Donell.*---Yes, he told me Mr. M'Donell was present. By Mr. M'Donell I mean, Mr. Alexander M'Donell, a partner of the North-West Company. I am sure he told me so.

*Mr. Stuart.*---Did he tell you how many persons were there?

*Mr. M'Donell.*---I do not think he gave me information as to what number of persons were there. He spoke a great deal in French, but, having noticed the material parts of his statement, I did not pay particular attention to the more minute.

*Chief Justice Sewell.*---Are you sure, Sir, that the prisoner told you the Mr. M'Donell was Alexander M'Donell.

*Mr. M'Donell.*---He told me that Mr. M'Donell was Mr. Alexander M'Donell, a partner in the North-West Company.

*Mr. Stuart.*---You was, I believe, Sir, made a prisoner once?

*Mr. M'Donell.*---I was made a prisoner by the North-West Company in 1815, and taken to Montreal.

*Mr. Stuart.*---When did Mr. Keveny go to England? and have you seen him since?

*Mr. M'Donell.*---In the autumn of 1813 he went, and I have not seen him since.

*Mr. Stuart.*---Mr. Keveny was a mild man, not given to quarrel, or of a hasty temper, no way ungovernable?

*Mr. M'Donell.*—As far as I knew Mr. Keveny he had a just sense of his own character, and a high sense of honour. I never saw him more disposed to quarrel than other men.

*Mr. Stuart.*—Were you, Sir, in the service of the Hudson's Bay Company?

*Mr. M'Donell.*—I never considered myself in the service of the Hudson's Bay Company. I was agent for Lord Selkirk, and held a commission for judicial purposes or matters, in a tract of land ceded by the Hudson's Bay Company to the Earl of Selkirk. I was governor there, it being a right they have reserved; the judicial authority over this ceded territory the Hudson's Bay Company have reserved to themselves. I hold that commission, and have done so since June, 1811.

*Mr. Stuart.*—Are you, Sir, now, and how long have you been, Lord Selkirk's agent.

*Mr. M'Donell.*—I am principal agent to Lord Selkirk in the Indian territory, and have been so since the 10th or 12th of June, 1811, which is the date of my commission.

*Mr. Stuart.*—Have you in your possession the warrant issued against Keveny?

*Mr. M'Donell.*—I have not in my possession a warrant for the arrest of Keveny. I had one, which I found at Fort Douglas, but I sent it, with other papers, to my Lord Selkirk.

*Mr. Stuart.*—I have for the present done with Mr. M'Donell.

FREDERICK DAMIEN HEURTER, *Sworn,*

*And Examined by the Attorney-General.*

*Heurter.*—J'ai été aux pays Sauvages. En 1816 j'étois au service de la compagnie du Nord-Ouest. J'étois autrefois sergent dans le régiment des

Meurons. J'ai vu le butin de Keveny au fort au Bas de la Rivière, je l'ai reçu d'un Canadien nommé Wells, et d'un Sauvage nommé Joseph. Le coffre qu'ils m'avoient livré étoit marqué "Keveny."<sup>(40)</sup>

*Mr. Stuart.*—This is no evidence against the prisoner.

*Chief Justice Sewell.*—No, we have not taken it down.

*Attorney-General.*—Avez vous reçu une lettre du prisonnier ?

*Heurter.*—Oui, j'ai reçu une lettre de lui, mais je ne l'ai pas ici.<sup>(41)</sup>

*Cross examination conducted by Mr. Vanfelson.*

*Heurter.*—J'étois engagé au service de la compagnie du Nord-Ouest pour trois ans, mais j'ai sorti avant que mon engagement a fini. Je n'ai pas entré au service de la compagnie d'Hudson's Bay, ni de Milord Selkirk. Je n'ai jamais été employé au service d'aucune autre compagnie.

*Mr. Vanfelson.*—En quel service avez vous été depuis que vous avez quitté le Nord-Ouest ?<sup>(42)</sup>

(40) I have been in the Indian territories. In 1816 I was in the service of the North-West Company. I was formerly a sergeant in the Meurons regiment. I saw Keveny's baggage at the fort at Bas de la Rivière; I received it from a Canadian named Wells, and an Indian called Joseph. The trunk which they delivered to me was marked "Keveny."

(41) Yes, I received a letter from him, but I have not got it here.

(42) H.—I was engaged in the North-West Company for three years, but I left before my engagement was completed. I did not enter into the service of the Hudson's Bay Company, nor of my Lord Selkirk. I never was employed in the service of any other company.

*Mr. V. F.*—In what service have you been since you left the North-West.

*Chief Justice Sewell.*—I do not know whether that is a proper question for the witness to have put to him.

*Mr. Vanfelson.*—I should consider it one which he is, on a criminal prosecution, bound to answer; for the utmost that his answers to the chain of questions I am putting can expose him to, will be a civil prosecution. If I make him acknowledge that he deserted his employers, before his engagement was finished, and that he went into the service of others, no worse consequence can attend it, than that it might furnish ground for a civil action of damages; and upon a cross-examination I hope we are not exceeding our limits.

*Chief Justice Sewell.*—Well, upon a cross-examination, perhaps, you are not going beyond bounds. I only thought that it was a question which might call upon the Crown to protect the witness from answering, and as I did not see any effect which it could produce to the benefit of the prisoner, I thought I should save time by stating my difficulty on the subject. If you think it important to shew, what I suppose you are aiming at, had you not better put the more direct question to him. I do not say this to dictate to you by any means what course to pursue, it is merely a suggestion.

*Mr. Vanfelson.*—I will put the question in that way. Avez vous été employé au service de la compagnie d'Hudson's Bay, de Milord Selkirk, ou d'aucune personne, depuis, ou avez vous reçu de salaire ?

*Heurter.*—Je n'ai jamais été employé au service de la compagnie d'Hudson's Baie, ni de Milord Selkirk, ni d'aucune autre personne, et je n'ai pas reçu de salaire de qui que ce soit. Après que De Reinhard avoit été emprisonné à Montréal, j'étois le voir deux ou trois fois, comme je crois. Je ne me rappelle d'aucun message que je l'ai

porté, et je ne lui ai pas dit que j'étois chargé d'un message, à ce que je me rappelle.<sup>(13)</sup>

*Mr. Vanfelson.*—I have done with this witness.

*Attorney-General.*—You say that you left the service of the North-West Company. Will you give us your reasons for so doing?

*Chief Justice Sewell.*—No, no, Mr. Attorney-General, you must not go into that. You have the fact and I can not permit you to go farther. Call the next witness.

*Attorney-General.*—Let Doctor Allan be called; who was about being sworn:

*Chief Justice Sewell.*—My learned brother, Mr. Justice Bowen, has reminded me of a circumstance, which has been extracted from the last witness on his cross-examination, which renders your question perfectly admissible, Mr. Attorney-General. You are certainly entitled to ask it, so that your witness may account for what, at present, appears unfavourable to his reputation, namely, that he left the service of his employers, before he had compleated his engagement. I did not, at the time you put the question, recollect the circumstance, but, upon my brother Bowen's suggesting to me his reason for thinking the question was a fair one, I referred to my notes, and certainly am of the same opinion.

*Mr. Stuart.*—It is with the greatest deference that I beg to submit a contrary opinion to that just

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<sup>(13)</sup> *Mr. V. F.*—Have you since been employed in the service of the Hudson's Bay Company, or of my Lord Selkirk, or of any other person, or have you received any salary?

*H.*—I have never been employed in the service of the Hudson's Bay Company, or of my Lord Selkirk, or of any other person, and I have not received any salary from any one whatsoever. After De Reinhard was in prison at Montreal, I went to see him, I believe, two or three times. I do not remember any message which I carried to him, and, as far as I can recollect, I did not tell him that I was entrusted with any message.

intimated by your honour, but I presume your honour did not intend to prevent us from stating, that we had an objection, which your honour's overruling the question, rendered it unnecessary to produce. But now we beg leave to contend that the question is perfectly inadmissible in law, and perfectly unnecessary for the sake of justice. The question of the Crown on the examination in chief was; were you in the service of the North-West Company? and the answer of the witness was, yes. We ask, have you left that service? and he answers, yes. There the facts end, and it is quite unnecessary to go farther.

*Chief Justice Sewell.*—For you perhaps it is.

*Mr. Stuart.*—And equally unnecessary for justice also.

*Chief Justice Sewell.*—That I deny. Justice to the witness, who has just left the box, requires it, therefore it is necessary to the justice of the case. However, neither of us are judges of that. The Crown officers know their own case, and they are the judges of what is necessary to support it.

*Mr. Stuart.*—I still must beg to contend that all the purposes of justice are obtained by the question of the Crown, which led to evidence that he had been in the service of the North-West Company, and, by our own on the cross-examination, proving that he had left it. We have imputed no object to the witness, we therefore consider that the question should not be entertained, for it can be of no possible benefit, nor do I see any end which it can answer, unless to engraft a civil action on a criminal process. Our only object in putting our question was, that we thought it necessary to know, and that the jury should know, what service the witness is in at the present moment, because there is an influence arising from circumstances, which we are not always capable



of divesting ourselves of, nor indeed, from its subtleness, do we always detect its operations. Had his answers to my learned friend's subsequent questions been different to what they were, though they would not have invalidated his evidence, would it not have been a fair circumstance to excite their caution, and therefore proper to be before the jury, that he was in the employ of the private prosecutor. Upon his saying that he was not, we left him, and we do not consider that the Crown are entitled to re-examine the witness.

*Chief Justice Sewell.*—It is really painful when first principles of law are opposed by solemn argument from gentlemen for whose abilities we entertain the highest respect, and as painful flatly to deny them, and, without hearing them, to decide contrary to their wishes, but it is an absolute waste of time to hear an argument upon this question. Had I recollected the extent of the question you had put to this witness, I should not have hesitated a moment as to the right of the Crown to put the question proposed by the Mr. Attorney-General. Let us for a moment look how the case stands. You ask Vitchie, a former witness, whether he did not write to Heurter, the present witness, recommending a certain course, and you support the testimony given by Vitchie, by making Heurter acknowledge that he did that which was recommended to him. The inference you wish to draw is evident. To obviate the supposed influence which the jury from the circumstance of his leaving his employers without finishing an engagement; I say to remove any unfavourable impression as to his credibility, which this, (to use your own term,) desertion might create, the Crown officers wish to ask him the manifest question: *why* did you leave the North-West Company? and in my opinion it can not be denied to him.

*Mr. Justice Bowen.*—In concurring with the Chief Justice, I remark, that I suppose the object of our sitting here is to see justice done between the parties, and to fairly take the evidence, as it is adduced on both sides, and, in the performance of this office, that it is my duty to put any question, or make any observation, that strikes my mind as important, either to the Crown or to the prisoner, and I trust so long as I have the honour of a seat on this bench, I shall never be so wanting in my duty to the public justice of the country, or to myself, as to abstain from doing so. In the present instance, I refrained from putting the question though I saw the propriety of it, but when it was put and was about being overruled, I felt it my duty to point out to the Chief Justice that he had, in my opinion, overlooked the part of the evidence which the Attorney-General, by that question, was desirous of clearing up to the jury. It was a sense of duty that prompted me to do so now, and a similar sense has urged any former remarks I have made, and not a wish to conduct this prosecution as was yesterday so ungenerously intimated by Mr. Stuart.

*Attorney-General.*—Pourquoi avez vous quitté le service du Nord-Ouest ?

*Heurter.*—J'ai quitté le service de la compagnie du Nord-Ouest parceque j'ai reçu ordre de me joindre aux Bois Brulés pour prendre par force le Fort Douglas. C'étoit en 1816, dans le tems que le capitaine D'Orsonnens y étoit.<sup>(44)</sup>

*Attorney-General.*—Call Dr. Allan.

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<sup>(44)</sup> *A. G.*—Why did you leave the service of the North-West.

*H.*—I left the service of the North-West Company because I received orders to join the half breeds to take possession of Fort Douglas by force. It was in 1816, at the time that captain D'Orsonnens was there.

*Doctor JOHN ALLAN, Sworn,*

*And examined by the Attorney-General.*

*Attorney-General.*—Do you know the prisoner at the bar? and where did you first see him?

*Dr. Allan.*—I am acquainted with the prisoner at the bar. I first saw him in November 1816, at Fort William.

*The Attorney-General, producing a paper.*—Do you know that paper?

*Mr. Stuart.*—What is that paper?

*Attorney-General.*—I am going to ask the witness what it is.

*Chief Justice Sewell, addressing the Attorney-General.*—What is that paper?

*Attorney-General.*—Witness! what is that paper?

*Chief Justice Sewell.*—Give me the paper. (*The paper being handed to, and examined by the Court.*) It purports to be a confession of Charles De Reinhard before Thomas, Earl of Selkirk, one of His Majesty's Justices assigned to keep the peace in the Western District of Upper Canada, and also in the Indian territories, &c. &c.

*Mr. Stuart.*—Let the Earl of Selkirk be produced then.

*Attorney-General.*—I will proceed with the examination of the witness, and when I produce the paper, or wish to make it evidence, the learned gentleman can object, if he thinks proper. In what capacity, Sir, do you attend the Earl of Selkirk, or did you at the time you were in the Indian territory, or Fort William?

*Dr. Allan.*—I attended the Earl of Selkirk as a surgeon.

*Attorney-General.*—Did you never attend in any other capacity? did you never act as clerk to Lord Selkirk?

*Dr. Allan.*—I never acted as clerk to Lord Selkirk.

*Attorney-General.*—Lord Selkirk, I believe, was a magistrate in the Indian territory at that time?

*Dr. Allan.*—He was.

*Attorney-General.*—Was you present when the prisoner at the bar signed a paper, purporting to be a confession?

*Dr. Allan.*—I was present when De Reinhard signed a paper drawn with his own hand.

*Mr. Stuart.*—How can the witness know that, he did not see him write it, I suppose.

*Attorney-General.*—I beg my learned friend not to interrupt me, I shall prove it incontestibly to be his hand writing; you say, Dr. Allan, that you saw the prisoner sign a paper which was drawn up by himself?

*Dr. Allan.*—Yes, I understood three days before, that he was drawing up one, and he told me at the time of signing it, that it was his own hand writing.

*Attorney-General.*—Was you present when the paper was given to the Earl of Selkirk by the prisoner?

*Dr. Allan.*—I was present when the prisoner gave the paper to Lord Selkirk.

*Attorney-General.*—Was any thing said at the time; any promise or threat made use of?

*Dr. Allan.*—There was nothing said in my presence, except that Lord Selkirk asked if he wished to add any thing, or take away, or change any thing, contained in the paper; and he said, No. There was not any promise or threat made use of; De Reinhard signed the paper, and then delivered it to Lord Selkirk, and when it was delivered, Lord Selkirk asked him whether he wished to add, or take away, any thing from that paper.

*Mr. Stuart.*—I object to this, as going to prove the contents of a paper by evidence that is not legal. Let the paper be produced regularly.

*Mr. Justice Bowen.*—I suppose you have no objection as far as the testimony has gone. You can object to the paper when offered to be made testimony.

*Mr. Stuart.*—No. It does not signify to me when I make my objection to the paper, but I considered it would be saving time to do so at the commencement of the examination into it. Dr. Allan says distinctly that he was not clerk, but surgeon, to Lord Selkirk, who, as I understand, signs this paper as a magistrate; produce him, or his clerk.

*Solicitor General.*—For all the purposes of this confession, I should contend, may it please your honours, that the present witness was a clerk. Did you, Sir, act as surgeon to Lord Selkirk in witnessing the paper?

*Dr. Allan.*—I was surgeon to Lord Selkirk. I came out as a medical attendant to Lord Selkirk's family. I had never heard of Red River at that time.

*Solicitor General.*—But you witnessed the prisoner sign it, and say it was his own writing?

*Dr. Allan.*—I was present when it was signed. Nothing was altered; he said he did not wish to alter any thing. Three or four others were also present.

*Mr. Stuart.*—I hope the Court are not taking this, before the Crown makes the paper evidence; surely, till the paper is put in, this can not be evidence.

*Chief Justice Sewell.*—This is evidence only so far as it is a recapitulation of what took place at the delivery of a certain paper which, if not produced, goes for nothing, or if produced, and found inadmissible, the same consequence attends it. If

found to be evidence, we then have the whole attendant circumstances before us.

*Mr. Stuart.*—It would be more frank of the Crown officers, to state explicitly what it is they are going to prove by this paper.

*Solicitor General.*—We mean to prove a voluntary confession on the part of the prisoner.

*Mr. Stuart.*—Oh! that is it. Is it?

*Attorney-General.*—Certainly it is, and have we not a right so to do?

*Mr. Stuart.*—Then, if I understand the Crown officers, it is their intention to prove a deposition taken before a magistrate, by a by-stander, and I object to such proof.

*Attorney-General.*—My learned friend is, I think, a little premature. We have produced no paper. He can not therefore make an objection to the mode of proof.

*Chief Justice Sewell.*—It is of no very material consequence when the objection is made. You have stated that you intend to prove a confession upon paper, by this witness, and you have examined him relative to the manner in which the paper was delivered to the Earl of Selkirk, and Mr. Stuart immediately, (declaring that he objects to its being produced,) proceeds to state the reasons for which he objects. I suppose, according to strict etiquette, the time for objecting would be when the paper is put into the hand of the witness and the question is asked; is that the paper which you saw signed and delivered by the prisoner at the bar to the Earl of Selkirk? that undoubtedly is the regular time of putting the question, and you had better reserve your objection to that stage of the examination.

*Attorney-General.*—Did Lord Selkirk send for any person to witness the prisoner sign the paper?

*Dr. Allan.*—Lord Selkirk sent for a gentleman

belonging to the North-West Company, named Dease, to see De Reinhard sign the paper, and, he signed it as a witness; he read the paper, in my presence, and signed it as a witness.

*Attorney-General.*—Did he make any remark on reading it?

*Dr. Allan.*—Mr. Dease read the paper, and asked the prisoner if the contents were true. De Reinhard said, yes; they were true, and signed it, and Mr. Dease signed as a witness. Mr. Dease read the paper to himself, and not aloud.

*Attorney-General.*—Is that the paper, Sir, which you speak of?

*Mr. Stuart.*—I object to that question.

*Attorney-General.*—Is that the paper?

*Chief Justice Sewell.*—Now is the time certainly for Mr. Stuart to tender his objection, and to be heard in support of it.

*Mr. Stuart.*—The officers of the Crown produce a paper purporting to be a confession of the prisoner at the bar, taken before a magistrate, and they propose to prove the signature of Charles De Reinhard, by the gentleman now in the box. To this course of the learned gentlemen we object, and I shall have the honour very briefly to submit to the Court, the grounds upon which our objections are founded. We object to this paper or confession being proved, unless the magistrate before whom it was taken, or that magistrate's clerk, is brought forward to prove it, as it is a confession which, on its very face, shews that it was taken under the statute of Philip and Mary. Here then is the case. We have before us a confession or declaration, before a magistrate, on a charge of felony, and the question is, can it be received in evidence? We say no, except the magistrate or his clerk is produced, according to the provisions of the statute of Philip and Mary.

Without reference to the authorities upon the subject, the necessity for a strict compliance with this provision of the act must, I conceive, be apparent to every one. At the time of making the confession, he was in the magistrate's hands, who, according to his judgement might liberate or imprison him, for the statute of Philip and Mary gives that discretion to the magistrate, but provides a check against magistrates inducing prisoners to confess, by rendering no other evidence sufficient to prove a confession, but their own oath, or that of their clerk who was present at the time of its being made, and the reason is apparent, because it is the magistrate alone who can give what the law invariably demands, the best evidence of any fact that it is wished to prove. Apply it to this case, and it is obvious that this gentleman, who was in the room a short time, five minutes perhaps, can not give us that information which the magistrate could before whom the confession was made, and who must necessarily know whether any promise or undue influence was resorted to. Upon the great and leading principles of criminal law, that the best possible evidence must be brought before the Court, this confession is inadmissible. What is the best possible evidence in this case, why indubitably that person who knows all about it, from beginning to end. Who is able to give a legal quality to the confession by answering those introductory questions, which it is indispensable shall be put previous to any such examination being read in evidence. MacNally p. 41, in a few words, lays down the rule, which it is impossible to evade. "Before such examinations can be read in evidence, it must be testified that they were made freely, without any menace, or terror, or any species of undue influence imposed upon the prisoner." Who, I say, but the



magistrate, or his clerk, can satisfactorily prove this. Here we have a confession attempted to be proved, without a justice being brought before the Court, or his clerk; and a confession not written down at the moment, when it might be supposed that a sense of guilt burdening the conscience, led to a full developement of all the circumstances connected with the crime. What certainty have we that threats and menaces were not made use of, or what certainty, on the other hand, have we that promises were not resorted to, to induce the confession. If my instructions are correct, promises must have been held out, for previous to the confession, I believe, we shall be able to prove that De Reinhard was confined closely and treated with rigour, but that after he had delivered this paper, he was liberated and treated with kindness. This circumstance alone is sufficient to excite suspicion, and to dictate the absolute necessity of most strictly scrutinizing every thing connected with this pretended confession. The peculiar situation of the magistrate who received this confession forms a reason to examine into this case (more than any other,) with the utmost minuteness. Fort William, where the prisoner at the bar was in a rigorous confinement, previous to making this confession, had been taken by, and then remained in possession of, this very magistrate. A justification for all the violence and aggression which characterized the capture of that Fort was, we are told, that it was indispensable to enable this magistrate to bring to justice a band of criminals, who had thought themselves above the law. This is the story that had, by every possible means, been circulated in that country, and that all in opposition to this magistrate were rebels and traitors. That story not answering, except in the wilderness, where information could

not be obtained, except through the channel and under the observation, of this very magistrate, recourse was had to the press, to enable the actors in these scenes to stand clear in the public opinion. I hold in my hand a publication, in which this very confession is given to the public, and not the confession alone, but with comments calculated to inflame the public mind, and deprive this unfortunate man, and every other person any way connected with these transactions, of a fair and impartial trial. Most sincerely do I trust, as it is the first, so it may be the last time, we shall hear not only of a British subject, but of any human being, having been exposed to the danger of the public ear being poisoned against him by the very magistrate who has received this confession. Here is a magistrate who, to gratify his own desire of revenge, has dared to reveal the King's counsel, which by his oath he was bound to keep secret, and to disturb and sully the pure fountain of national justice, and as it has hitherto always been pure, so may it always remain, and I trust in God we shall never again witness such an infringement of this sacred shield as this case has presented. But we are not driven to the necessity of exhibiting the deformity of this conduct, it is sufficient that we rest upon a principle of law, and say, that till the best evidence, which the nature of the case will admit of, is produced, this confession can not be permitted to go to the jury. It may perhaps be urged, that the number of witnesses to the signing of this confession, excludes all idea of its being obtained in any other than the most open and honourable manner; on the contrary, I should contend that the number of witnesses adds no strength to the confession, but rather the reverse, indeed that circumstance alone renders it suspicious, and would, though

unattended by any of the strong points to which I have alluded, suggest to my mind that all was not fair. If it was, why deviate from the usual course? no reason, I think, can be assigned that will satisfy either the Court or the jury that any necessity existed for such a step. In conclusion, I contend that Lord Selkirk, as the magistrate, ought to be produced so that the prisoner may have the benefit of examining him, and as it is positively required by law that the magistrate shall be produced previous to the confession being received as evidence. I have no wish to trespass further on the time of the Court, being confident, that, till the necessary compliance with the statute takes place, it will not be permitted to be given in evidence against the prisoner. Reason, as well as law authorities unite against such a confession being received.

*Mr. Vanfelson.*—S'il plaît à la Cour, j'ai l'honneur, premièrement, de soumettre, que cette confession du prisonnier, ne *peut* pas être reçue, parce que le magistrat devant lequel elle a été faite n'est pas produit pour la prouver, et secondement, qu'à cause de la conduite du magistrat elle, ne *doit* pas être reçue. Le magistrat, le Comte du Selkirk, de qui je ne veux rien dire, que comme un magistrat; je dis, ce magistrat a tant méprisé son devoir, qu'il s'efforçoit d'empoisonner l'esprit public, en donnant au monde ce papier que les officiers de la Couronne ont produit comme une confession que le prisonnier avoit faite au magistrat; et ne se bornant pas seulement à l'imprimer, ce magistrat, oubliant également son rang dans la société, et le devoir que, comme un magistrat, il devoit au Roi, à ses sujets, et à lui même, a même osé commenter sur la confession. Oui, vos honneurs, pas content d'avoir publié, (contre son devoir,) cette confession, il n'a pas eu honte d'empoisonner l'opinion publique contre le prisonnier, en faisant des commentaires

là-dessus. Je n'objecte pas contre cette confession, parceque je la regarde comme le résultat d'un compromis avec les officiers de la Couronne; avec mon savant confrère le Procureur General, ou mon savant confrère, monsieur le Solliciteur. Non, point du tout; mais je dis qu'il n'est pas certain qu'elle ne soit pas le résultat d'un compromis entre l'accusateur particulier et le prisonnier à la barre, pour quelque dessein qui ne paroît pas à present. Je procède à soumettre à la Cour que la loi demande toujours, et exige même, la meilleure évidence contre un prisonnier que la nature du cas permettra. Donc, je demande, quelle évidence, dans ce cas, est la meilleure, de cette confession? Non pas assurément le temoignage d'un regardant, non pas celui d'un monsieur qui vous dit qu'il n'a pas vu le prisonnier l'écrire, non, non pas du Docteur Allan; mais la meilleure evidence seroit le temoignage du magistrat devant lequel la confession avoit été faite, ou de son commis, et non pas celui d'un du monde qui, purement par accident, étoit présent. Regardons cette confession, et le temoignage du Docteur Allan là-dessus. Cette confession avoit été préparée d'avance, ce qui n'est pas assurément une circonstance ordinaire. Encore, au tems que le prisonnier l'a livrée au magistrat, il est prouvé que le Comte de Selkirk demanda, s'il vouloit y changer aucune chose, y ajouter, ou en diminuer. Assurément mes savans confrères ne diront pas que cette conduite est à l'ordinaire.— Donc, je demande pourquoi? pour quelle raison? Que se trouve-t-il dans ce cas qui demandoit cette conduite extraordinaire? Je dis que le moment qu'on trouve qu'un magistrat s'est départi de l'ordre regulier, dans ce même moment il y a beaucoup de raison de craindre que le tout n'a pas été honnêtement conduit; et regardant la manière dans laquelle cette confession du prisonnier a été faite, et

aussi la manière de sa production ici, je me trouve obligé de dire que les circonstances sont très soupçonneuses. Une autre circonstance qui le rend de grande importance que le magistrat soye produit est celle-ci; la confession étoit déjà écrite quand il l'a livrée au Comte de Selkirk en présence du Docteur Allan, et sans qu'on produise le Comte de Selkirk il est impossible de savoir si aucune menace ou aucune promesse a été faite au prisonnier pour l'induire à confesser. Regardons, pour un moment, la confession. Qu'est ce qu'elle est? C'est une histoire d'un meurtre qu'on prétend avoir été commis dans les territoires Sauvages, et le papier récite particulièrement que cette confession est dans l'écriture propre du prisonnier, et qu'il l'a faite devant Milord Selkirk, un des magistrats des territoires Sauvages, qui aussi l'a signée comme magistrat. J'espère, et c'est avec confiance que je l'espère, que cette Cour n'introduira pas une règle si nouvelle et si dangereuse, qui permettroit de prouver une confession, sans que le magistrat soye produit devant lequel la confession avoit été faite. Mais je suis certain que vos honneurs ne permettront pas que cette confession soit reçue. Encore, j'ai l'honneur de soumettre, que cette confession ne peut pas être reçue, à moins que le magistrat qui l'a reçue du prisonnier soit présent, parceque s'il étoit dans la boîte des témoins, peut-être, suggéroit il quelque chose en faveur du prisonnier, ou que le prisonnier, pendant son examen du magistrat, pourroit faire paroître des circonstances lesquelles ne sont pas connues d'aucun autre. Peut-être qu'il paroîtroit que le magistrat avoit vu le prisonnier auparavant, et donc on pourroit expliquer une circonstance laquelle est à présent très difficile à entendre, savoir: *comment* cette confession a été obtenue? Pour quelle raison le prisonnier l'a préparée? C'est le droit du prisonnier

d'examiner le magistrat devant lequel les officiers de la Couronne disent qu'il a fait sa confession.— La loi dit qu'auparavant qu'une confession peut être reçue contre un prisonnier, qu'il sera établi, qu'elle n'a pas été obtenue par des promesses ni par des menaces, et que cette circonstance sera prouvée. Par qui? Non pas par aucun individu qui, par hasard, ou par accident, se trouve dans le bureau de police, ou dans la chambre d'un magistrat au tems qu'un prisonnier fait sa confession, mais il est expressement dit, que cela se doit faire par le magistrat devant lequel la confession a été faite, ou bien par son commis qui l'avoit écrite, et pourquoi? Pour la raison, assurément, que le magistrat, ou son commis, devoit fournir le meilleur témoignage dont le cas pourroit admettre, et la loi exige toujours la meilleure évidence. S'il étoit possible de permettre la réception d'une confession contre un prisonnier dans l'absence du magistrat, ou de son commis, il est empêché de produire, et dépouillé de ce qu'il trouveroit sa meilleure défense. C'est le devoir des Avocats de la Couronne de produire le meilleur témoignage, et je demande, le produisent-ils en produisant le Docteur Allan? Je dis que non. Assurément non. Si mes savans confrères, les officiers de la Couronne, disoient que le Docteur Allan l'a signé comme témoin, et donc que l'objet de la loi, savoir, l'identité de la confession, est obtenu, je réponds, cela n'importe; la loi exige que le magistrat, ou son commis, soit le témoin, parceque c'est le meilleur témoignage qui est toujours demandé par la loi. Encoré, je sou mets à la Cour que cette confession ne peut pas être admise, parceque le prisonnier n'auroit pas le pouvoir de transquestionner le magistrat.<sup>(44)</sup>

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<sup>(44)</sup> If it please the Court I have the honour, in the first place, to submit that this confession of the prisoner *can not be*

*Attorney-General.*—He is not prevented bringing the Earl of Selkirk, if he thinks him a necessary witness.

*Mr. Vanfelson.*—Je demande pardon à mon savant confrère, mais c'est son devoir de produire le

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received, because the magistrate before whom it was made is not produced to prove it, and secondly, that on account of the conduct of the magistrate, it *ought not* to be received. The magistrate, the Earl of Selkirk, of whom I wish to say nothing but as a magistrate; I say that this magistrate has so widely deviated from his duty, that he has done his utmost to poison the public mind by giving to the world this paper, which the officers of the Crown have produced as a confession which the prisoner had made to this magistrate, and not confining himself alone to the printing of it, this magistrate, equally forgetful of his rank in society, and the duty which, as a magistrate, he owed to the king, to his subjects, and to himself, has even dared to comment upon the confession. Yes, your honours, not satisfied with having published, contrary to his duty, this confession, he has not been ashamed to poison the public opinion against the prisoner, by making comments upon it. I do not object to this confession because I consider it as a result of an understanding with the officers of the Crown, with my learned brother the Attorney-General, or my learned brother Mr. Solicitor. No, not at all, but I say that it is not certain whether it is not the result of an understanding between the private prosecutor and the prisoner at the bar, for some purpose which does not here appear. I proceed to submit to the Court that the law always requires, and indeed exacts, the best evidence against a prisoner, which the nature of the case will permit. Then, I ask, what is, in this case, the best evidence of this confession? assuredly not the testimony of a bystander, not that of a gentleman who tells you he did not see the prisoner write it, no, not that of Dr. Allan; but the best evidence would be the testimony of the magistrate before whom the confession was made, or of his clerk, and not that of one of the persons who happened, by pure accident, to be present. Let us look at this confession and the testimony which Dr. Allan gives concerning it. This confession had been prepared beforehand, which is certainly not an usual circumstance. Again, it is in proof that at the time the prisoner delivered it to the magistrate, the Earl of Selkirk enquired whether he wished to alter any thing in it, to add any thing to it, or to take any thing from it. Most assuredly my learned brethren will not say that this conduct is usual. Therefore I ask, why? for what reason? I say the moment we find a magistrate departing from

meilleur témoignage pour prouver son cas, et si, comme dans le moment présent, il présente des témoignages d'une autre description à la Cour, ce n'est pas à lui de dire que nous le pouvons produire. Il est absolument nécessaire, avant que cette confes-

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the regular course, from that moment there is great reason to fear that the whole has not been honestly conducted, and looking at the manner in which this confession of the prisoner was made, and also at the mode of its production here, I am compelled to say that the circumstances are very suspicious. Another circumstance which renders it of great importance that the magistrate should be produced, is this: the confession was ready written when it was delivered to the Earl of Selkirk in the presence of Dr. Allan, and, without the Earl of Selkirk is produced, it is impossible to know whether any threat or any promise was made to the prisoner to induce him to confess. Let us look for a moment at the confession. What is it? it is the history of a murder which is alleged to have been committed in the Indian territories, and the paper particularly recites that this confession is in the prisoner's own hand writing, and that he made it before My Lord Selkirk, one of the magistrates for the Indian territories, who likewise signed it as such magistrate. I hope, and I hope with confidence, that this Court will not introduce a rule so novel and so dangerous, as to allow of proving a confession without the production of the magistrate before whom the confession was made. But I am sure that your honours will not permit this confession to be received. Again, I have the honour to submit that this confession can not be received, unless the magistrate who received it from the prisoner be present, because, if he were in the witness's box, perhaps he might suggest something in favour of the prisoner, or that the prisoner, during the examination of the magistrate, might draw out circumstances which are not known to any other person. Perhaps it might appear that the magistrate had seen the prisoner before, and then a circumstance would be explained, which at present is very difficult to understand, namely, *how* this confession was obtained, and for what reason the prisoner drew it up. The prisoner has the right to examine the magistrate before whom the Crown officers say that he made his confession. The law dictates that previous to a confession being received against a prisoner, it shall be established that it was not obtained by means of promises or of threats, and that this circumstance shall be proved. By whom? not by any individual who, by chance or accident, happens to be in the police office, or in the apartment of a magistrate, at the time that a



sion peut être reçue, que le magistrat, ou son commis, nous dise qu'elle fut faite volontairement, librement, également sans aucune promesse d'avantage, et sans aucune menace de danger. Je veux bien admettre que, si le magistrat et son commis se trouvoient morts, donc le témoin actuel seroit la meilleure évidence; mais à présent il ne l'est pas, et je maintiens, avec beaucoup de confiance, que ce n'est aucunement répondre à mon argument, que monsieur le Procureur General me dise, que nous avons le pouvoir de la produire. Je le sais bien, mais il est de son devoir de prouver son cas par le meilleur témoignage, et puisque la règle est telle, je dis qu'en produisant le Docteur Allan, messieurs les officiers de la Couronne n'ont pas produit le meilleur témoignage dans leur pouvoir, et la conséquence naturelle sera que cette confession, n'étant pas prouvée par le magistrat, ne peut pas être reçue par la Cour comme évidence pour les jurés. Ce n'est pas à nous à contredire la confession avant qu'elle ait été mise en preuve. Pour la met-

prisoner is making his confession, but it is expressly directed that it shall be done by the magistrate before whom the confession was made, or by his clerk who had written it, and why? certainly because the magistrate, or his clerk, would be the best evidence of which the case would admit, and the law requires always the best evidence. If it were possible to allow a confession to be received against a prisoner, in the absence of the magistrate, or of his clerk, he is prevented from producing, and deprived of, that which he would find to be his best defence. It is the duty of the Crown lawyers to produce the best testimony, and I ask, do they produce the best, in producing Dr. Allan. I say no, most assuredly not. If my learned brethren, the officers of the Crown, choose to say that Dr. Allan signed it as a witness, and that therefore the object of the law, namely, the identity of the confession, is obtained. I answer, that does not signify; the law requires the magistrate, or his clerk, to be the witness, because that is the best evidence, and the best evidence is always required by the law. Again, I submit to the Court, that this confession can not be admitted, because the prisoner would not then have the power to cross-examine the magistrate.

tre en preuve, il est absolument nécessaire de produire le magistrat, et quand il sera dans la boîte des témoins, si nous ne pouvons pas prouver que les circonstances sous lesquelles elle étoit faite, la prévient d'être reçue, c'est notre faute. Ayant connoissance de cette confession, nous attendions le Comte de Selkirk, et nous étions préparés de le voir ; mais à présent nous soumettons, avec grande confiance, que vos honneurs ne la recevront pas.<sup>(45)</sup>

*Attorney-General.*—The paper offered as evidence on the part of the Crown, I beg leave to contend, is entitled to be received, either as a confession taken before a magistrate, or as a paper in the hand writing of the prisoner, which we have proved it to be. I admit, with my learned friends on the other side, that the rule is to pro-

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(45) I ask pardon of my learned brother, but it is his duty to produce the best evidence in order to establish his case, and if, as in the present instance, he offers testimony of another description to the Court, it is not for him to say that we may produce it. It is absolutely necessary, before this confession can be received, for the magistrate, or his clerk, to tell us, that it was made voluntarily, freely, and equally without any promise of benefit, or menace of harm. I admit, that if the magistrate and his clerk were dead, then the present witness would be the best evidence, but at present he is not so, and I very confidently contend, that it is no answer to my argument for Mr. Attorney-General to tell me that we are at liberty to produce it. I know that, but it is his duty to prove his case by the best evidence, and since the rule is such. I say that in producing Dr. Allan, the officers of the Crown have not produced the best evidence in their power, and the natural consequence will be that this confession, not having been proved by the magistrate, can not be received by the Court as evidence for the jury. It is not our business to contradict the confession before it has been put in proof. To put it in proof it is absolutely necessary to produce the magistrate, and when he is in the witness's box, if we can not prove that the circumstances under which it was made prevent it from being admitted, the blame will lie with us. Knowing of this confession, we expected to see the Earl of Selkirk, and we were prepared to meet him ; but now we submit, with great confidence, that your honours will not admit it.

duce either the magistrate, or his clerk, to prove the confession of a prisoner; but, I submit, that if it is proved that there was no clerk present, and the magistrate is not before the Court, I submit, with great deference, that, if we prove, as we have done, that no menace was used, nor any promise made, to induce the confession, that we are entitled to prove it. That no inducement was made use of, or resorted to, is, I think, clear, and, I conceive, that it is no matter how that circumstance is brought before the Court, so that it be but clearly and undeniably established; this I should contend is the best evidence; but this paper, I submit, does not set forth that it was an examination under the statute, but is much in the form of a letter, narrating the circumstances of the murder of Mr. Keveny, and must, if not as a confession under the statute, be received as an authenticated paper in the hand writing of the prisoner, made by him freely and voluntarily, from a sense of guilt, and therefore, in the words of MacNally, deserving of the highest credit. As a confession or examination under the statute, I contend, that, having proved there was no clerk, and the magistrate being absent, we produce the best evidence; but if the Court are against us in that particular, and think, as a confession under the statute, it is not sufficiently proved, yet, as an authenticated paper, in the prisoner's own hand writing, delivered by him in the presence of the witnesses, after the most fair enquiries whether he wished to alter any thing contained therein, it must be received, and handed to the jury as evidence for them to decide on.

*Solicitor General.*—Upon this question I shall very shortly trouble your honours. The first objection of my learned friends to the introduction of this confession is, that it is not the best evidence,

and that to make it so, the magistrate, or his clerk, must be produced: another objection is, that this confession has been published. With respect to the best evidence, I perfectly agree with my learned friends, that the best evidence in all cases ought to be produced; but, agreeing in the principle, I draw a different inference from the proposition; I contend, in opposition to my learned friends, that we have produced the best evidence which the case admits of, indeed the strongest that can in any case be produced; we produce an acknowledgement, in his own hand writing, that he committed the crime for which he is now on trial. My learned friend, Mr. Stuart, says that authority and reason combine to oppose any confession being received, unless proved by a magistrate, or his clerk; the reason of the thing is not quite so obvious. A magistrate can not authenticate all depositions made before him, it is impossible. Absence, sickness, and a variety of circumstances, may prevent the attendance of a magistrate. Indeed, in the present instance, we could prove that the magistrate is sick, but we shall take a wider course, and contend that we do all, that, from the circumstances of the case, can be required of us. We produce a confession in the hand writing of the prisoner at the bar, and we prove his signature by a witness who saw him sign it, and heard him acknowledge that the contents were true. This confession differs from a confession taken under examination before a magistrate at a police office, inasmuch as it was prepared by the prisoner himself. We know the practice at home is this; a prisoner is taken to Bow Street, to undergo examination, in the course of which he makes a confession; on his trial at the Old-Bailey, the clerk of the office attends, and produces and authenticates the confession; but

this case is placed in a very different situation, and under such circumstances, as to render it impossible almost, strictly to follow the general practice. But, when I cite my learned friend, Mr. Chitty, upon the subject, I think I shall set the question at rest. I refer to page 571. In support of the position for which I am contending I might also refer to 2d. Hale, 6th. State Trials, to Hawkins, to Williams on Evidence, and many other authorities, but your honours will find it stated fully in Chitty, page 571, where he mentions the authorities on which it is founded. My learned friends have found out a very ingenious reason for not permitting the witness to prove the confession, he was not a clerk, that is, technically, (though, were it necessary, I might be disposed to contend that for all the purposes intended by the statute of Philip and Mary, the witness was so,) and they proceed to argue that a stranger accidentally, or purposely, in the room at the time of the confession being delivered, could not so completely prove the fact as the magistrate, or his clerk. Were I to advert to the remarks that have been made by my learned friends upon the magistrate, before whom this confession was made, were I to recall to their recollection, the indignant view they have taken of him, I think I should overturn the ingenuity of their argument; for taking their own character of him, surely a stranger would be more likely to prove candidly the circumstances attendant upon the confession, than such a magistrate as they have depicted. There is another point which, though supported by authority, my learned friends appear completely to have overlooked, namely, that confessions are to be presumed free, till the contrary is proved. In 6th. State Trials this doctrine is supported, but it is so clear a principle of law, that it is needless

to cite authorities to sustain it. MacNally has been cited to shew that the best evidence must always be produced, and looking at this confession, I contend we have complied with the rule for, although Dr. Allan was not retained as a clerk in the service of the Earl of Selkirk, yet, in this instance, he acted as such, and, for all the purposes for which the provision of the statute of Philip and Mary was enacted, he was a clerk. The object of that statute is to identify a confession by the signature of the magistrate, or the hand writing of his clerk. Dr. Allan does this fully. Another ingenuity of my learned friends will with equal facility be overset. They have discovered that there was no clerk at an examination, and that the confession is not the hand writing of the magistrate, and therefore, the statute not being complied with, ought not to be admitted as evidence. My learned friends appear to forget that the paper does not purport to be an examination, it is the result of an examination, and certainly much stronger from being entirely in the hand writing of the prisoner, because it is impossible that any misrepresentation can exist, which, though not likely, yet might creep in, if written by another person, such as the magistrate, or his clerk. The case is so clear and so fair, that doubt, I think, can not exist upon the subject, that this was a free and voluntary, and therefore a good, confession against the prisoner. He relates the same circumstances to captain D'Orsonnens, to Nolin, to Vitchie, to Mr. M'Donell, adding that he was going to Fort William to submit himself to the Earl of Selkirk, and to make a disclosure of all he knew, under a hope, (which was not warranted certainly,) that he would be admitted an evidence for the Crown. Arrived at Fort William, he employs himself in preparing this

statement, (for the witness says he heard or understood three days before, that De Reinhard was preparing a confession,) he finishes it, and in the presence of the witness and others, amongst whom was Mr. Dease, a person belonging to the company to which he himself was a clerk, who read the paper, and afterwards asked De Reinhard if the contents were true, to which he answered they were true, the Earl of Selkirk enquires if he wishes to add, to take away, or to alter, any thing in the paper, and saying he did not, he deliberately signed it and delivered it to Lord Selkirk, the witness, together with Mr. Dease and others, testing the act by putting their names to it. Surely then we are producing the best possible evidence when we tender this same paper, and prove its identity by producing Dr. Allan, who witnessed the signing and delivery. I know not what evidence can be stronger; it is the way deeds are invariably proved, and amply sufficient in the present case. The observations relative to the publication had I think better have been withheld, as I can not see that they were at all called for. We have nothing to do with printed publications, on the one side or the other, they can not be evidence, and it is to be regretted that they should enter our discussions. I beg my learned friends to be assured, that no man can condemn more than I do any thing calculated, in the most remote degree, to prejudice the public; were I not confident that it is unnecessary, I would intreat the jury to discard from their minds every thing that they may have heard or read of, out of doors, and to let nothing influence their minds in the judgment they have to form, but the evidence that may be laid before them, and the charge of your honours. Indeed, I believe the Attorney-General did call their attention to this part of their duty.

In conclusion, I beg to submit : 1st. that the confession is most distinctly proved and authenticated ; 2d. if it should be thought necessary to produce the magistrate, we may be permitted to prove, (which we should do by this witness,) that he is incapable of leaving Montreal, owing to sickness ; and 3d. that if a witness is necessary, then that Dr. Allan is a competent witness ; he was present at the time, he heard neither menace nor promise ; he heard the prisoner tell Dease the contents were true, he heard him asked if he wished to make any alterations, and heard him answer, that he did not ; he saw him sign it ; he himself put his name as a witness, and he saw him deliver it to Lord Selkirk. What can be stronger evidence against him ? what can be better evidence ? I contend that it must be admitted.

*Mr. Vallière de Réal.*—In reply to the Attorney and Solicitor General, I contend that Allan can not, from his own shewing, prove all the circumstances attending this confession. J'ai demandé dans quelle capacité il restoit auprès du Comte de Selkirk. Il vous a dit lui même qu'il étoit son chirurgien. Il n'étoit pas son commis ou greffier. Il n'étoit pas son factotum, mais il étoit le médecin, ou le chirurgien de famille de Milord Selkirk, et ce n'est pas le médecin, mais le commis, d'un magistrat, que le statut ordonne doit prouver une confession contre un prisonnier. Le Comte de Selkirk étoit présent ici au dernier terme, et il est du à son devoir, comme magistrat dans les territoires Sauvages qu'il soye ici à present ; et maintenant qu'il appert qu'il n'y avoit point de commis au tems que cette confession a été faite, il n'y a aucune personne que le magistrat lui même qui peut la prouver ; mais mes savans confrères les officiers de la Couronne disent, moyennant que la confession ne soye pas une bonne confession dans la loi cri-



minelle, cependant elle est bonne dans la loi commune. La loi commune exige le meilleur témoin. Nous disons, avec confiance de succès, que cette confession ne peut pas être produite comme évidence, car De Reinhard ne l'a pas fait librement, ni sous la surveillance de la loi. Il n'étoit pas, au tems qu'il l'a fait, en charge d'un connétable, mais il étoit néanmoins prisonnier; prisonnier dans un fort, que ce même magistrat avoit lui même en premier lieu pris avec des forces militaires, et ensuite retenu par une violence la plus abominable. Je soumets donc que, depuis le commencement, durant la continuation, et jusqu'à la fin, cette confession n'est pas la meilleure évidence, et donc ne peut pas être admise contre le prisonnier.<sup>(46)</sup>

*Chief Justice Sewell.*—Notwithstanding all the

(<sup>46</sup>) I asked him in what capacity he was retained about the Earl of Selkirk. He has told you himself that he was his surgeon. He was not his clerk or secretary. He was not his factotum, but he was the doctor, or family surgeon, of My Lord Selkirk, and the Statute does not enact that the doctor, but that the clerk, of a magistrate must prove a confession against a prisoner. The Earl of Selkirk was present here the last term, and it is due to his duty as a magistrate for the Indian territories that he should now also be here; for now that it appears that he had no clerk at the time when this confession was made, there is no person but the magistrate himself who can prove it. But my learned brethren, the Crown officers tell me, supposing the confession is not a good confession in criminal law, yet it is good in common law. Common law requires the best evidence, and on that account the Earl of Selkirk ought to be produced, because he is the best witness. We say, with confidence of success, that this confession can not be produced as evidence, for De Reinhard did not make it freely, nor under the eye of the law. He was not, at the time he made it, in charge of a constable, but he was nevertheless a prisoner; a prisoner in a fort which that same magistrate had himself, in the first place, taken by military force, and afterwards retained possession of by the most abominable violence. I submit therefore, that from its commencement, during its progress, and until its completion, this confession is not the best evidence, and therefore can not be admitted against the prisoner.

exertions of the gentlemen who are counsel for the prisoner, notwithstanding all we have heard from them, we are most distinctly of opinion that this confession must be received as evidence proper to go to the jury. I shall proceed to shew distinctly that, upon sound legal principles, this is the only conclusion we can arrive at. I shall first take up Philips on Evidence, sect. 5, page 81, "since an admission is evidence against a party in civil suits, with much stronger reason is the voluntary confession of a prisoner evidence against him on a criminal prosecution, for it is not to be conceived that a man would be induced to make a free confession of guilt, so contrary to the feelings and principles of human nature, if the facts were not true."—Then, advertng to a late case, the case of Lambe, he says, "it seems now to be clearly established that a free and voluntary confession by a person accused of an offence, whether made before his apprehension or after, whether on a judicial examination, or after commitment, whether reduced into writing or not, in short, that any voluntary confession made by a prisoner to any person, at any time, or place, is strong evidence against him, and, if satisfactorily proved, sufficient to convict, without any corroborating circumstances." This doctrine was supported by my Lord Kenyon in Wheeling's case, 1 Leach Crown Cases, 349. Under these general principles, who can doubt that this paper is a good confession at common law, if a confession made at any time, and to any person, is strong evidence, but this being in writing, and signed by the prisoner, indeed the whole is the writing of the prisoner, is certainly stronger. A confession reduced to writing, though not signed, according to a late decision, is good evidence. Mr. Justice Grose in delivering the opinion of the twelve judges in Lambe's case, stat-

ed a majority held that such a confession would have been evidence at common law, and that it is not rendered inadmissible by any provision in the statutes of Philip and Mary, respecting examinations and informations before justices of the peace, "for," he adds, "if a prisoner's confession, even when not reduced into writing, be evidence against him, *a fortiori*, it must be admissible when taken down in writing, for the fact confessed, being thus rendered less doubtful, is of course entitled to greater credit, and it would be absurd to say, that an instrument is invalidated by a circumstance which gives it additional strength and authenticity." Now, this being the case, what is the paper offered by the Crown, and what is the principle by which its admissibility is to be tried, and this principle is stated by Hawkins and MacNally, but very clearly in MacNally, rule 11th, page 47. "Confessions are received in evidence, or rejected as inadmissible, under a consideration whether they are, or are not, entitled to credit." Now, this being the rule, in what shape does the paper before us present itself? before entering upon the examination on this point, I would remind the prisoner's counsel of that remarkable piece of testimony, given in evidence by Vitchie, that the prisoner told him "qu'il avoit tout avoué au capitaine D'Orsonnens, et qu'il alloit faire autant à Milord Selkirk, esperant être reçu témoin de la Couronne." Here we have his verbal determination to make a disclosure of the murder, I beg pardon, of what he knew of the *death* of Mr. Keveny, and we must not, in considering the admissibility of this confession, lose sight of this evidence, that he had previously avowed his intention of making a confession to a magistrate, because MacNally says again, rule 10th, page 45,— "It has been determined that where the accused

makes a confession in conversation, and afterwards makes another confession before a magistrate, acting judicially by taking the same in writing, the conversation, or parole confession, may be given in evidence," but not if it has not been given freely and voluntarily. The statute of Philip and Mary requires that a magistrate shall proceed to examine any person brought before him on a charge of felony, by putting such questions to the prisoner and those who brought him before the justice, as, in his legal discretion, shall seem necessary, and that this examination shall be taken down in writing, and old writers say, shall be signed. Hence the necessity of producing the magistrate. He puts the questions, his clerk, if he has one, writes down the answers, therefore MacNally says, page 41, rule 7th, that on the principle that "the best evidence the nature of the case affords is the only evidence that can be received, the proof of such examinations of the prisoner must be made either by the justice of the peace, or the coroner, who took them, or the clerk who wrote them down, that they are the true substance of what the prisoner confessed." The necessity for producing the magistrate is not, according to the vulgar opinion, to prove identity, but that the paper offered on the trial in evidence is the substance of what the prisoner had confessed before him in his examination previous to commitment or bailment. But this is quite a different case; this is not the act of a magistrate, not the act of the clerk to a magistrate, it is the act of the prisoner himself, following up the intention he had antecedently expressed to Vitchie of making a confession of all he knew relative to the death of Keveny, he writes the declaration with his own hand, which is now produced in evidence against him. There can not therefore be any ne-

cessity for either magistrate or clerk to be produced, for we have better; we have the very best, evidence possible. We have the evidence of the prisoner himself of what he really meant to say. Proceeding to the evidence of Dr. Allan, what can be stronger? the prisoner hands the paper that he had been, (as Dr. Allan had heard or understood,) some days previously engaged in preparing, to the Earl of Selkirk, who, before De Reinhard signed it, sent for Mr. Dease, a clerk in the same employ as the prisoner, the paper is given into the hands of Mr. Dease, who reads it, and then asks "De Reinhard is this true? are the contents of this paper true?" and he answers, "they are true," and signs it, and Mr. Dease and Dr. Allan, and others, who were present, signed it. Under such circumstances, can the credit of the paper be for a moment doubted? can it, flowing as I have shewn it does, from the highest possible source, made by himself, agreeably to a determination he had previously communicated to his old comrade Vitchie, I say, can it for one moment be a question whether or not the Crown are entitled to the benefit of this piece of testimony? I think there can not for a moment. There is no necessity to produce Lord Selkirk, or his clerk, or for any further proof, because we have already the highest possible proof, viz. his own confessions, *viva voce*, completely substantiated by the fulfilment in this confession, written with his own hand, of his avowed determination to Vitchie of making a confession to Lord Selkirk. On what ground can we reject this confession? I beg the gentlemen engaged in the defence, to recollect that this was his declared intention, to recollect that he was brought into the room prior to signing it, to recollect that by one of his own fellow-servants he was asked if it was true, to recollect

that neither menace nor promise was made to him, to recollect that, on the contrary, he was asked if there was any thing he wished to change, any thing to add, any thing to take away, and therefore it is, *primâ facie*, a confession voluntarily made, if it is intended to set up the contrary, it must be proved, but certainly there was neither menace or promise made at the time of signing it. I repeat, let it be recollected that he had before expressed his intention of making a confession to Lord Selkirk, and that he signed this paper, containing a confession before his Lordship, and in the presence of one of his own party, asking him at the time, "are the contents of this paper true?" and he answered, "they are true." Let these circumstances be recollected, and, I ask, is it possible that, under such a continuation of evidence, we can reject the confession, as a confession at common law. Lord Selkirk, as far as we see, took no examination, the prisoner had prepared a detailed statement of the transactions as they occurred, which he delivered to Lord Selkirk, who certified it to have been so delivered by the prisoner, as his account of the transaction. In my judgment, it is a manifest continuation of his original intention of making a confession. Wherever we find him, from the moment he arrived at the encampment, as testified by the two voyagers, whenever we meet him in conversation with his friends, we find he persists in the same story, down to Vitchie, to whom he explains the motive for his conduct. He comes at last to Lord Selkirk, and reduces the *viva voce* narrative to writing, and the whole is finished with more than usual caution, four persons being present, one of whom, who might reasonably be supposed to be favourable to the prisoner, Mr. Dease, reads the paper, asks him, "Reinhard is this true?" as if he had said,

“did you so kill Mr. Keveny?” and he says, “yes it is, I did.” He then deliberately signed it, and the others witnessed his signing. As a confession made before these persons it must be received. Had it been made only *viva voce*, it would have been a good confession at common law, and it can not be invalidated by a circumstance that clothes it with additional strength. It is not received as an examination under the statute of Philip and Mary, taken before a magistrate, but as the prisoner’s confession at common law, made in his own hand writing, and that part of it must be received. The remainder we have nothing to do with, we only take his own act, that which is in his own hand-writing is evidence to go to the jury, the other part is not.

*Mr. Justice Bowen.*—This is a proposition so plain, that it is quite unnecessary for me to add to the observations of his honour the Chief Justice, with whom I entirely agree that we can not reject this paper, under the different circumstances which attend it; circumstances, in my opinion, much stronger than usually attend confessions. The prisoner wrote his own confession, nothing can be stronger evidence than such a confession. Nevertheless his writing his own confession, and Doctor Allan knowing, three days before, that he was engaged upon it, may open the door to the prisoner’s counsel to shew under what circumstances it was made, but at present I am clearly of opinion that we are bound to admit it, but our doing so does not preclude you from shewing, from other circumstances, which have not yet appeared in evidence, that, though we receive it now, yet that it ought not to be let go to the jury, but till these circumstances are in evidence, I consider it a good confession and legally entitled to be admitted.

*Mr. Stuart.*—The confession was certainly made

under the hope of pardon, and of being brought forward as an evidence on the part of the Crown.

*Chief Justice Sewell.*—That is merely his own statement, and can go for nothing, but you may prove any thing you can. We do not shut the door against your destroying this confession. We only say that, *primâ facie*, it must be received, but this is not intended to preclude you from shewing any thing to oblige us, by destroying the confession, to tell the jury that they are to lay it aside *in toto*.

*Examination resumed by the Attorney-General.*

*Attorney-General.*—Is this the paper which the prisoner signed in your presence?

*Dr. Allan.*—It is. I saw the prisoner at the bar sign it. It is in his hand-writing, and is signed in two places, in the one Charles Reinhard, and in the other Charles De Reinhard.

*The paper (see Appendix D.) was then put in and read, the Chief Justice directing the clerk of the Crown to read only that which was the prisoner's own hand-writing, and not the appendage, or certificate, beginning, "Bèfore me, Thomas, Earl of Selkirk."*

*Attorney-General.*—Is the appendage or certificate in the hand-writing of the Earl of Selkirk?

*Dr. Allan.*—No. It was written by Mr. Becher.

*Chief Justice Seiwel.*—You can not put that question. We have nothing to do with it. We only know the paper as containing the confession of the prisoner, which is at common law admissible evidence, and we have received it as such, but we have nothing to do with the Earl of Selkirk.

*Attorney-General.*—That is the case on the part of the Crown.

*Question by a Jurymen.*—I wish to ask the wit



ness whether before the prisoner signed the paper, he read it?

*Dr. Allan.*—Yes; I read it, not out loud, or to the prisoner, but I read it to myself.

*Juryman.*—Is it now in the same state?

*Dr. Allan.*—Yes, except the endorsement.

*Cross examination conducted by Mr. Stuart.*

*Mr. Stuart.*—Was Lord Selkirk at the time you speak of this confession being made, in possession of Fort William, and had he been so for some time previous?

*Dr. Allan.*—Lord Selkirk was then, and had been for some time, in possession of Fort William.

*Mr. Stuart.*—How long had De Reinhard been at Fort William previous to his signing the paper?

*Dr. Allan.*—About a week, I believe. I understood he arrived at Fort William about a week before, but I was not there when he arrived.

*Mr. Stuart.*—How was he living? Was he in close confinement; was he guarded?

*Dr. Allan.*—He was living in a room with another fellow-serjeant of the same regiment. There were no sentinels over him.

*Mr. Stuart.*—What time of day was it when the paper was signed and delivered to Lord Selkirk?

*Dr. Allan.*—It was delivered in the evening, about seven o'clock. It was dusk, I recollect, and I should suppose about that hour.

*Mr. Stuart.*—Had you ever seen this, or any paper like it, before the day it purports to have been signed?

*Dr. Allan.*—I had not seen either this paper, or any other like it, previous to the 28th of October, which was the day it was signed and delivered to Lord Selkirk.

*Mr. Stuart.*—You said, I think, that you knew

he was preparing a confession; did you know that from captain Matthey? had you any conversation with captain Matthey on the subject?

*Dr. Allan.*—I knew a few days before, that he was writing something, and I may possibly have spoken to captain Matthey about it, but I did not see the paper till I saw it on the 28th of October, when it was signed.

*Mr. Stuart.*—Do you not know, Sir, that the original of this pretended confession was written by captain Matthey, and that De Reinhard only copied it?

*Dr. Allan.*—I do not know that the original of this paper was written by captain Matthey, and copied by De Reinhard.

*Mr. Stuart.*—Nor any similar paper?

*Dr. Allan.*—No, nor any similar paper.

*Mr. Stuart.*—Captain Matthey, I believe, had the management of all the affairs at Fort William, at the time you were there?

*Dr. Allan.*—Captain Matthey regulated the affairs at Fort William.

*Mr. Stuart.*—This paper, was it delivered to Lord Selkirk as an individual, or in his quality of a magistrate?

*Dr. Allan.*—It was laid before the Earl of Selkirk in the capacity of a magistrate.

*Mr. Stuart.*—De Reinhard, I imagine, on his arrival at the fort, was taken before the Earl; was he not?

*Dr. Allan.*—I do not know whether the prisoner was taken before Lord Selkirk at the time of his arrival at Fort William. I was not there at that time.

*Mr. Stuart.*—He must have seen Lord Selkirk before that time, I presume. He would hardly be a week, I suppose, at Fort William, without seeing Lord Selkirk?

*Dr. Allan.*—I dare say that he did. I should not think that he would be so long as a week without seeing Lord Selkirk, but I can not give evidence to that point, as I was not there myself at the time.

*Mr. Stuart.*—I have done with Dr. Allan.

*Attorney-General.*—Where is captain Matthey, Sir, at present? is he within the jurisdiction of this Court?

*Dr. Allan.*—Captain Matthey is at Montreal.

*Mr. Stuart.*—I have one more question. When, Sir, did you leave Fort William?

*Dr. Allan.*—I left Fort William on the 17th of May 1817.

*Mr. Stuart.*—Did you reside at Fort William from the time of your going there in 1816, till May, 1817.

*Dr. Allan.*—I generally resided there during that period, but not uniformly. I was sometimes a good many miles distant.

## DEFENCE.

*The counsel for the prisoner applying to the Court to adjourn for a short time to enable them to arrange the course of examination of their witnesses, it was adjourned for an hour and a half, during which interval the jury were to take their customary refreshment. The Court was accordingly adjourned to half past one o'clock; P. M.*

*At which hour the Court re-assembled and the jury having been called over, and being present.*

*Mr. Stuart.*—Call James M'Tavish.

*James Chisholm M'Tavish was about being sworn, when it was intimated to the Court that one of*

*the jury was unwell, and he feared was unable to proceed with the trial, the Chief Justice directed a physician to be sent for, and Dr. Hacket shortly after came into Court, and was sworn. The Chief Justice intimated to Dr. Hacket that the object of the Court was to ascertain, under the oath of a professional gentleman, whether the health of the juror was such as would prevent him going on with the trial, or, if the Court were to adjourn for a few hours, whether the adjournment would be likely to enable the juror to sustain the fatigue. The apprehension of the Court was, lest, if they proceeded with the trial at the present moment, the indisposition of the juror should increase, so as to render it necessary to relieve him altogether, whereas perhaps an adjournment for a few hours now, might restore him to his accustomed health. Dr. Hacket being reminded that he was to hold no converse with the juror but on the subject of his health, examined the state of it, and represented to the Court that he did not apprehend that there was any necessity for adjourning the Court, as he did not doubt but the juror would be able to attend to the proceedings.*

**JAMES CHISHOLM M'TAVISH, Sworn,**

*And Examined by Mr. Stuart.*

*Mr. M'Tavish.*—I was a clerk in the service of the North-West Company in the month of August 1816, and then resident at Fort William. I know that on the 13th day of August 1816, Fort William was taken possession of by a military force. This force acted under the immediate command of captain D'Orsonnens. The Earl of Selkirk was not at Fort William on the 13th of August. The persons composing this force were all armed, some doubly armed, having guns and pistols. The officers belonging to this force were

armed with swords and pistols; the muskets, generally speaking, had bayonets attached to them, and the force had altogether the appearance of a military force. Captain D'Orsonnens was at the head of the force which arrived at Fort William, and he was at the head of the first party that entered by force into Fort William. On the evening of the 12th of August, we distinctly saw the men belonging to the late De Meuron regiment cleaning their arms, and observed them plant a cannon against Fort William. They were on the other side of the river, but we could see them very plainly from the fort. At the moment of their arrival at Fort William, and before they entered the fort, a bugle was sounded, and the men huzzaed, and cried "aux armes, aux armes, et aux canons." They then rushed into the fort, and seized two pieces of cannon which were against the mess-house, and planted them in the middle of the square, which was a commanding position. It was a position which commanded the entry into the fort. They loaded the cannon. The men under captain D'Orsonnens made a great noise, and were exceedingly outrageous and abusive, and captain D'Orsonnens behaved in a very violent manner. I heard him threaten Mr. John M'Donald, a partner in the North-West Company, and saw him seize him with one hand, and in the other he had a pistol, which he put to the ear of Mr. M'Donald.

*Solicitor General.*—This surely can not be evidence to repel a charge of murder against the prisoner at the bar, nor do I see that it can have any effect at all on the case.

*Chief Justice Sewell.*—Nor can it, unless it is clearly brought up to the knowledge of the prisoner, and then it will form a question for the jury to determine, what influence that knowledge

would have upon his mind. We shall see presently to what it is to lead.

*Mr. Stuart.*—I can have no hesitation in immediately informing my learned friend, the Solicitor General, what is the object I have in view in the course of examination I am pursuing. From captain D'Orsonnens's testimony, it might also be inferred that the fort was given up voluntarily. It will, I am sure, be in the recollection of the Court that, in his examination, captain D'Orsonnens described himself as a simple individual. I wish to prove that he was not there as a private gentleman, but that he was at the head a military force, that he was not there, as from his representation we might be induced to imagine, *solus cum solo*. I shall exhibit such direct evidence as to the conduct of captain D'Orsonnens that it must materially affect the credibility of his testimony. I will put the direct question to the witness. Was captain D'Orsonnens armed, and did he act as the head of a military force? did he command it?

*Mr. M'Tavish.*—Captain D'Orsonnens was armed; he had a sword and pistols; he commanded as the head of an armed body. The officers were dressed in the uniform of the late De Meuron regiment, and captain D'Orsonnens himself wore a grey military great coat. Some time after the fort had been taken possession of, a reinforcement arrived under the command of captain Matthey, about twenty of whom, with captain Matthey, kept possession of the fort that night, and the next day sentinels were placed all over the fort. On the arrival of captain Matthey, and before the arrival of Lord Selkirk, the sentinels were placed over the fort. Captain Matthey took the command on his arrival at Fort William, and he arrived the same day as captain D'Orsonnens, he came in the afternoon.

*Solicitor General.*—I beg pardon for interrupting my learned friend, but I believe at this time, captain D'Orsonnens was not there, and as this evidence is intended to destroy the credit of captain D'Orsonnens, it is necessary that we should clearly understand that we have nothing brought forward, except when captain D'Orsonnens was present.

*Chief Justice Sewell.*—I really can not see what you can have more than you have got. You have obtained the substantive fact, that Fort William was taken by force, (I am speaking to the gentlemen engaged in the defence,) what do you wish for more? It is taken by armed men, cannon are planted, sentinels are placed; what more complete possession could be obtained of a place than this?

*Mr. Stuart.*—But we consider it necessary, with deference to your honour, to shew not merely that it was taken possession of forcibly, but that it was retained possession of for a considerable time.

*Chief Justice Sewell.*—Well, put the general question then; how long was it kept possession of, and you come at the point at once. *The question being put:*

*Mr. M'Tavish.*—I am not, of my own knowledge, able to say how long Lord Selkirk retained possession of Fort William. I left it on the 4th of September, and at that time it was in possession of the armed force together with the whole of the property. Fort William is the grand depot of the North-West Company; all the equipments for the interior, and all the returns, pass through Fort William. From the 13th of August till the 4th of September, the day I left, there was no communication with the Indian territory for the North-West Company, it was entirely cut off.

*Cross-examination conducted by the Attorney-General.*

*Mr. M'Tavish.*—At the time Fort William was taken there were upwards of a hundred men there, perhaps in and about the fort, there might be upwards of two hundred men. They were not armed, neither were the cannon loaded. There was no resistance made, nor any opposition further than this: one of the gentlemen belonging to the North-West Company said that they could not think of admitting so many armed men into the fort, till they knew what had been done with Mr. M'Gillivray and the other gentlemen who had gone across the river. The gates were opened, and there was no resistance made. Mr. M'Donald held one of the gates in his left hand, and I was standing by him. There was no violence used, except by captain D'Orsonnens. I did not see the gate slapped in the face of any body. I was standing at the door of the gate, only a few paces from Mr. M'Donald, and I did not see him shut the gate. At the time captain D'Orsonnens arrived, I was at the gate. I did not know at the time that Lord Selkirk acted as a magistrate in the Indian territory. I do not know that the principal partners of the North-West Company went out to meet Lord Selkirk in his capacity of a magistrate. I had not heard of a warrant being issued before captain D'Orsonnens's arrival, and the taking of the fort, nor did I see a constable. At the time captain D'Orsonnens came, Mr. M'Gillivray and other gentlemen were out, but I did not know why they had gone out, I did not even know that they were out of the fort. I have since heard that they went across the river in consequence of a warrant, but I had not seen it, or heard of it, at the time. After the fort had been taken forcible possession of, I knew



there were warrants, but I did not before. I did not know of a warrant against Mr. M'Gillivray.

*Chief Justice Sewell.*—You can bring Mr. M'Gillivray forward as a witness if necessary; this witness has told you before that he knows nothing of any warrant till after the fort was taken possession off.

*Solicitor General.*—I want to prove that a process was issued, and that its execution was opposed. I could not anticipate what the defence was to be, but I now wish to shew that there was no violence used beyond what was necessary to enforce the execution of a civil process, which had been resisted, and I consider we are entitled to do so.

*Chief Justice Sewell.*—We wished to keep this out upon the examination in chief, it was insisted upon being gone into, and now I suppose must be permitted in cross-examination.

*Mr. Stuart.*—We thought it very material evidence, and we still think it so. As to the warrant that the learned Solicitor General is enquiring about, I care not a straw about it. If a warrant existed, it can be no justification for the conduct pursued, on the contrary, it greatly enhances the crime. What! is a warrant issued against A. B. C. D. E. and F. to justify an appropriation of property, a seizure of guns, and an occupation of stores, belonging to the great commercial rivals of the very magistrate who issued it, and whose conduct has so largely contributed to all the evils we have to deplore.

*Attorney-General.*—The line of defence taken by my learned friend is certainly a very singular one. He would induce us to believe that there was a system of terror produced similar to that which is caused by the sacking of a town. My learned friend's statement is perfectly terrific. Pistols to

heads, the taking of cannon, and planting so as to command the gate; and all this to people, who, according his account of the matter, made no resistance whatever.

*Mr. Stuart.*—That is our defence, and we will prove it, and prove that all these outrages were well known to De Reinhard.

*Cross-examination resumed by the Attorney-General.*

*Mr. M'Tavish.*—After the fort was taken, I knew of a warrant to arrest some persons on a charge of conspiracy. The names were all in one warrant, which was signed, Selkirk, and was against some of the partners of the North-West Company. I then saw some persons acting as constables, but I did not previously. The men under command of captain D'Orsonnens, besides his violence in putting the pistol to Mr. M'Donell's head, seized Mr. John M'Donald, and Mr. Allan M'Donald, two of the partners of the North-West Company, and made them prisoners, by putting sentinels over them, and the day after, I understood, they were taken before Lord Selkirk. His Lordship did not tell me that he was acting as a magistrate. Two days after the fort was taken, I was forbid by captain Matthey to go out of it, or to speak to any of the servants of the North-West Company. I considered myself as a prisoner to a military force. We were treated like military prisoners; we were treated with every indignity. I was forbid, at my peril, to speak to any of the servants of the North-West Company. I was confined to limits in the fort which I was forbid by captain Matthey to leave. I slept in the same bed and eat in the same room as I had previously done, but I was forbid to go out. We were commanded in a military manner. Guard was regularly mounted in

the fort, and I considered myself as a military prisoner. This force consisted principally of foreigners, and I took them for soldiers. If they had been drest in black clothes, or not in uniform, I should have considered them well trained to the use of arms, and very expert in military manœuvres. Fort William is the principal depot of the North-West Company. The correspondence and principal books of the company are kept there. Persons going into the interior, generally leave their wearing apparel and heavy baggage there. I did not see the persons who were arrested at the time the fort was taken go away in the custody of constables, but I did see them go with soldiers. I took them to be soldiers, they were in uniform and armed, but I do not know whether they were in the pay of His Majesty. I know of an express arriving at Fort William with the proclamation of Sir John Coape Sherbrooke, and I asked, and was refused, permission by Lord Selkirk to send them into the interior.

*Chief Justice Sewell.*—When did it arrive at Fort William?

*Mr. M<sup>r</sup> Tavish.*—I can tell if permitted to refer to a deposition which I made before the Chief Justice of Upper Canada. I perceive they arrived in a canoe on the 22d of August: there were a number of them addressed to gentlemen holding commissions as magistrates in the interior, and a number of blank ones. I asked Lord Selkirk for men and canoes to send them forward, but I was refused. I do not know whether Lord Selkirk sent them or not. I know Mr. Pritchard, and I know that he left Fort William; but I do not know that he took the proclamations. I do not think our gentlemen received their's from him.

*Mr. Justice Bowen.*—Did Mr. Pritchard go about that time? at what date did he go?

*Mr. M'Tavish.*—I can not, without reference, tell what date, but it must have been about that time, as I left Fort William myself on the 4th of September.

*Cross-examination continued by Mr. Attorney-General.*

*Mr. M'Tavish.*—The proclamations specially addressed to the gentlemen of the Hudson's Bay Company, were taken by Lord Selkirk, those to the gentlemen of the North-West Company, were handed over to me, but I was not permitted to send them, nor were they forwarded when I left the fort in September. I did not refuse to send them by Mr. Pritchard, for I did not know of his going till after he had gone, and then I found it out by a steersman of ours, named Wells, having deserted.

*Attorney-General.*—Are you confident you never refused to send them by Pritchard, or by any other person?

*Mr. M'Tavish.*—I am upon oath, and I know what I am saying. I repeat that there were a number of the proclamations addressed to magistrates in the interior, some to gentlemen connected with the Hudson's Bay Company, which were kept by Lord Selkirk, and others to gentlemen of the North-West Company, which were given to me, but that I was not allowed, though I asked permission, to forward them, and I swear positively that I did not refuse to send them by Mr. Pritchard, or any body else, for I was never applied to to send them. Mr. M'Gillivray and the other gentlemen who went over the river returned the same night, they had sentinels over their doors. Lieutenant Grafenreith remained in the fort all night. The whole who went over the river were partners of the North-West Company. At the time of cap-

tain D'Orsonnens entering the fort there were only three absent.

CLAUDE BLONDIN, *Sworn,*

*And examined by Mr. Vanfelson.*

*Blondin.*—J'étois en 1816 au service de la société du Nord-Ouest. J'étois à Fort William au milieu du mois d'Aout, et la compagnie étoit alors en possession du fort. Je sais que le treizieme d'Aout le Fort William a été pris. Il y avoit cinquante ou soixante hommes, armés avec des fusils et des canons. Ils étoient vêtus en habillemens de soldat de différentes couleurs, quelques uns en rouge, quelques uns en verd, quelques uns en bleu. Je connois le capitaine D'Orsonnens, et il a commandé cette force; ce monsieur que je vois ici. Je n'ai pas distingué des bayonettes. Ils ont poussé les barrières, sont entrés à pleines jambes, se sont saisis des canons, et se sont rassemblés dans le quarré ou place publique. On n'a fait aucune résistance contre eux. Les portes n'étoient pas fermées, ni l'entrée barrée. Après avoir pris possession ils ont visité partout le fort, et ils mettoient des sentinelles aux portes des gens. Le lendemain à huit heures du soir, le capitaine D'Orsonnens est venu à mon logement. J'étois couché, il m'a blâmé à cause d'un feu qu'il avoit vu dans le chantier à canots.<sup>(47)</sup>

<sup>(47)</sup> I was in 1816, in the service of the North-West Company. I was at Fort William in the middle of the month of August, and the company was then in possession of the fort. I know that Fort William was taken on the thirteenth of August. There were fifty or sixty men, armed with muskets, and cannon. They were dressed in soldiers' clothes of different colours, some in red, some in green, some in blue. I know captain D'Orsonnens, and it was he who commanded this force; that gentleman whom I see here. I did not distinguish any

*Solicitor General.*—I am sorry to interrupt my learned friend, but really this is not evidence, and is only, in my humble opinion, an unnecessary delay of the time of the Court, because this sort of testimony has no bearing upon the case. It is for the sake of preserving regularity in our proceedings, that I make the objection, and to save the time of the Court.

*Mr. Vanfelson.*—Les objets de la defence sont deux; premièrement pour faire voir à la Cour que la confession n'a pas été faite volontairement, mais qu'elle a été extorquée du prisonnier par des circonstances particulières; et secondement, que le Fort William a été pris par force, et que le capitaine D'Orsonnens n'étoit pas un individu simple.<sup>(48)</sup> I intend to shew that captain D'Orsonnens was not a private individual. My instructions are, that I shall be able to shew, that he was constantly employed in debauching and endeavouring to detach the servants of the North-West Company, and if I am able to prove this, as I do not doubt but I shall, it will, I think, be a very proper matter for the consideration of the jury, whether this is the conduct of a private gentleman, and I take it the more I prove that is calculated to invalidate the

bayonets. They pushed open the barriers, entered the place on a run, seized the cannon, and forined themselves in the square, or public place. No resistance was made to them. The gates were not shut, nor the barriers fastened. After having taken possession they searched all over the fort, and placed sentinels at people's doors. The following day, at eight o'clock in the evening, captain D'Orsonnens came to my lodging. I was gone to bed; he blamed me on account of a fire which he had seen in the canoe-yard.

(48) The objects of the defence are two; first, to shew to the Court that the confession was not made voluntarily, but that it was extorted from the prisoner by particular circumstances; and secondly, that Fort William was taken by force, and that captain D'Orsonnens was not a simple individual.

strict correctness of that assertion of captain D'Orsonnens, the more I destroy his evidence, and in proportion as I destroy that, I weaken the case on the part of the Crown, and strengthen the defence of the prisoner.

*Examination resumed by Mr. Vanfelson.*

*Blondin.*—A ce tems il m'a dit qu'il me tiendrait responsable de ma vie, si le feu, ou d'autre accident, prenoit dans le chantier. Le lendemain j'ai encore vu le capitaine D'Orsonnens, et en conséquence des observations que je faisais j'ai été envoyé à l'autre coté de la rivière. J'ai vu le Fort William pris. Il étoit pris par une force militaire, et le capitaine D'Orsonnens la commandoit.

*Mr. Vanfelson.*—Avez vous connoissance que le capitaine D'Orsonnens a dit aux personnes au service de la compagnie qu'il seroit mieux de le quitter, ou que les messieurs du Nord-Ouest étoient des rebelles, ou que leur commerce étoit fini.

*Blondin.*—Il a dit qu'ils étoient des rebelles et———<sup>(19)</sup>

*Solicitor General.*—I object, *in toto*, to this line of evidence. I do not see what captain D'Orsonnens's conduct, at the time Fort William was tak-

<sup>(19)</sup> *C. B.*—At that time he told me he would hold me answerable at the peril of my life, if fire, or any other accident, should happen in the canoe-yard. On the following day I saw captain D'Orsonnens again, and in consequence of the remarks I made, I was sent to the other side of the river. I saw Fort William taken. It was taken by a military force, and captain D'Orsonnens commanded it.

*Mr. V. F.*—Is it within your knowledge that captain D'Orsonnens said to the persons in the service of the company, that it would be best to leave them, or that the gentlemen of the North-West were rebels, or that their trade was at an end?

*C. B.*—He said that they were rebels, and———

en, has to do with this case, and still less has this pretended endeavour to seduce and debauch, as my learned friend calls it, the servants of the other company. I object to this sort of examination.

*Mr. Vanfelson.*—My learned friend is too late, for the witness's answer is taken down.

*Solicitor General.*—I beg my learned friend's pardon, but I am in time sufficient. I object, if he had answered the question, to his answer going to the jury, or being on your honour's notes, for it is not only inadmissible, but absurd, to say that any private individual's misconduct can be evidence to exculpate a prisoner from a charge of murder. What if he did seduce the servants of the North-West Company, that is not to exculpate another of their servants from a charge of murder. But my learned friend says that he pursues this course to impeach the credibility of the witness on the part of the Crown, but the learned gentleman must be very well aware that his credibility can not be attacked in that way; there are various ways of impeaching the general credit of a witness, but proving that a fort was taken or that servants were seduced by him is not one of them.

*Chief Justice Sewell.*—The question relative to the fort is not so, Mr. Solicitor, it is not to general credit, or I should certainly be with you. But the question is to a specific declaration as to a matter of fact, which has been allowed as evidence, and to which captain D'Orsonnens has been examined.

*Mr. Justice Bowen.*—It is certainly not to the general credit of captain D'Orsonnens, but to a particular fact. He swore distinctly that he did not know that Fort William was taken by an armed force, because he did not see Lord Selkirk take it. Now this witness swears directly to the



contrary, for he swears, not only that he saw it taken, but further, that he headed the force by which it was taken. Whether the question relative to seducing the servants ought to be allowed, I don't know, but I think not. If it has been asked, and was answered in the negative, then perhaps you ought.

*Mr. Vanfelson.*—I shall not press it. I have done with this witness.

*Cross-examination conducted by the Solicitor General.*

*Blondin.*—J'ai vu les gens de Milord Selkirk entrer avec capitaine D'Orsonnens, parceque j'ai monté les escaliers là où je travaillois. Je croyois que le bruit fut occasionné par des gens qui se battoient, et c'est alors que j'ai vu les gens prendre le fort tout au clair. Je n'ai pas vu un connétable. Je suis sur que j'ai vu le capitaine D'Orsonnens entrer avec le monde. Je ne sais pas qu'il a été un capitaine dans le régiment de Meuron, ni je ne sais pas qu'il étoit connétable au tems que le capitaine D'Orsonnens entroit au fort. Je n'ai pas vu de connétable. Je ne sais pas que le capitaine D'Orsonnens entroit comme connétable. Il sembloit être soldat. Je connoissois le capitaine D'Orsonnens pour l'avoir vu auparavant.<sup>(50)</sup>

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<sup>(50)</sup> I saw the people of my Lord Selkirk enter with captain D'Orsonnens, because I ascended the stairs at the place where I was working. I thought that the noise arose from people fighting, and it was then that I saw the people take the fort quite distinctly. I did not see a constable. I am sure that I saw captain D'Orsonnens enter along with the people. I do not know that he has been a captain in the regiment of Meuron, nor I do not know that he was constable at the time captain D'Orsonnens entered the fort. I did not see any constable. I do not know that captain D'Orsonnens entered as constable. He looked like a soldier. I knew captain D'Orsonnens from having seen him before.

LOUIS LABISSONIERE, *Sworn,**And examined by Mr. Vallière de St. Réal.*

*Labissioniere.*—Mon nom est Louis Labissonière. Dans le mois d'Août, 1816, j'étois à Fort William, en qualité de voyageur employé par la Compagnie du Nord-Ouest. Je me rappelle le treizième d'Août. Ce jour là nous étions tous pris prisonniers par le monde commandé par le capitaine D'Orsonnons, et le capitaine Matthey. Nous étions dans le fort et dehors le fort, soixante ou quatre-vingt hommes, peut-être moins, peut-être plus: je ne puis pas dire le nombre exactement. Nous étions pris prisonniers dans le Fort William par le capitaine D'Orsonnons et le capitaine Matthey, qui nous ont défendu de sortir du fort. A chaque porte qui sortit du fort ils ont mis des sentinelles pour nous empêcher de sortir. Je ne puis pas dire positivement qui c'étoit qui commandoit, mais il m'a paru, et il a paru à nous tous, qu'ils étoient commandés par le capitaine D'Orsonnons, et le capitaine Matthey. Le Lord Selkirk arriva à cet endroit avant que le fort a été pris mais il n'a pas entré au fort que quelques jours après. Je ne puis pas dire combien, peut-être deux ou trois jours après. Le jour que le fort étoit pris ils ont pris possession du bureau ainsi que de tout le fort. Ils étoient bien armés avec des fusils et des bayonnettes au bout. Après que les autres s'y sont joints ils étoient peut-être deux cent hommes ou plus. La plus grande partie étoient habillée en rouge, et m'ont paru comme soldats.

*Mr. Vallière de St. Réal.*—Souvenez vous qu'ils vous ont dit quelle seroit la conséquence si on les opposoit ?<sup>(51)</sup>

<sup>(51)</sup> My name is Louis Labissoniere. In the month of August, 1816, I was at Fort William, in the capacity of voyageur

*Chief Justice Sewell.*—Surely you do not think you can put a question like that, nor can it be at all necessary for you. Their actions spoke loud enough, there was no occasion for words. I can not see what you would desire more.

*Mr. Justice Bowen.*—Surely you have sufficient evidence of the fact of the forcible taking possession of the fort. Upwards of a hundred, or perhaps two hundred, armed men with cannon, &c. were certainly not playing at soldiers.

*Examination resumed by Mr. Vallière de St. Réal.*

*Labissoniere.*—J'avois beaucoup de peur, et il y avoit une peur générale. J'ai connoissance qu'il y avoit de nos gens qui furent mises en prison, mais je ne puis pas dire qu'il y avoit un nommé Morrison emprisonné par le capitaine D'Orsonnens, pour quelques paroles qu'il a dit. L'Étang a été aussi

employed by the North-West Company. I recollect the 13th of August. On that day we were all taken prisoners by the people commanded by captain D'Orsonnens and captain Matthey. We were, in the fort and out of the fort, sixty or eighty men, perhaps less, perhaps more. I can not tell the number precisely. We were taken prisoners in Fort William by captain D'Orsonnens and captain Matthey, who ordered us not to stir out of the fort. They placed sentinels at each gate that went out of the fort, to prevent us from going out. I can not say positively who it was that commanded, but it appeared to me, and it appeared to us all, that they were commanded by captain D'Orsonnens and captain Matthey. Lord Selkirk came to that part before the fort was taken, but he did not enter the fort till some days afterwards. I can not say how many, perhaps two or three days after. The day the fort was taken, they took possession of the counting-house together with the fort. They were well armed with musquets and fixed bayonets. After the others had joined there were perhaps two hundred men or more. The greatest part of them were dressed in red, and they appeared to me like soldiers.

*Mr. V. de St. R.*—Do you remember that they told you what the consequence would be, if they were opposed.

emprisonné, (mais je ne sais pas par qui,) dans le même tems. Je n'ai pas connoissance quand les gens partirent pour Montréal, mais je sais que comme le nombre des voyageurs étoit diminué par ceux qui alloient à Montréal, le nombre des sentinelles a diminué aussi. En parlant de gens, je parle des gens du Nord-Ouest qui étoient emprisonnés par le capitaine D'Orsonnens. J'ai connoissance que le capitaine D'Orsonnens se proposoit de prendre le fort du Lac la Pluie. Quelques jours avant d'aller au Lac la Pluie le capitaine D'Orsonnens a dit, et je l'ai entendu, qu'il alloit hiverner au Lac la Pluie, qu'il y avoit beaucoup de provisions dans ce fort là, et qu'il seroit bien là. Au tems qu'il nous parloit de vouloir prendre ce fort, il a dit là dessus, " je puis bien le prendre " sans aucun danger, mes gens sont futés, et j'ai " des canons." J'ai vu le capitaine D'Orsonnens partir avec ses gens pour le Lac la Pluie, et il amena avec lui des canons qui étoient montés. Il y avoit deux pieces de canons qui avoient été prises de Fort William, et elles appartenoient à la Compagnie du Nord-Ouest. Elles avoient été prises aux coins de leur grande maison, mais je ne puis pas me rappeler au juste si elles étoient de fer ou de cuivre. Le capitaine D'Orsonnens a dit, et je l'ai entendu, que les messieurs du Nord-Ouest étoient envoyés à Montréal, et que la plus belle grace qu'ils pourroient attendre seroit d'être pendus. <sup>(52)</sup>

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<sup>(52)</sup> I was very much afraid, and there was a general panic. I have a knowledge that some of our people were put in prison, but I can not say that there was one named Morrison imprisoned by captain D'Orsonnens for some words he had spoken. L'Etang was also imprisoned at the same time, but I do not know by whom. I have no knowledge of when the people departed for Montreal, but I know that as the number of voyageurs was diminished by those who went to Montreal, the number of senti-

*Cross-examination conducted by the Attorney-General.*

*Labissoniere.*—Au tems que le capitaine D'Orsonnens entroit au Fort William, j'y étois dedans. Je ne puis pas dire que le capitaine agissoit comme un officier de la loi ou connetable. Je ne sais qu'il avoit un *warrant* à exécuter. Je n'ai vu aucun *warrant*. J'ai vu le capitaine D'Orsonnens quand il est parti avec ses gens pour le Lac la Pluie, et les canons étoient embarqués. Ils étoient montés. Le capitaine D'Orsonnens ne les a pas montés; ils étoient déjà montés par la Compagnie du Nord-Ouest.<sup>(s 1)</sup>

nels was also diminished. When I speak of people, I speak of the people of the North-West who were imprisoned by captain D'Orsonnens. I have a knowledge that captain D'Orsonnens proposed to himself to take the fort of Lake la Pluie. Some days before he went to Lake la Pluie, captain D'Orsonnens said, and I heard it, that he was going to winter at Lake la Pluie. that there were plenty of provisions in that fort, and that he would be well off there. At the time he talked to us of his intention of taking that fort, he said, speaking on that subject, "I can take it without any danger, my men are clever fellows, and I have got cannon." I saw captain D'Orsonnens take his departure for Lake la Pluie with his people, and he took cannon with him which were mounted. There were two pieces of cannon which had been taken from Fort William, and they belonged to the North-West Company. They were taken from the angles of their great house, but I do not exactly recollect whether they were of iron or of brass. Captain D'Orsonnens said, and I heard it, that the gentlemen of the North-West were sent to Montreal, and that the most favourable sentence they could expect would be to be hung.

<sup>(s 2)</sup> At the time captain D'Orsonnens entered Fort William, I was in it. I can not say that the captain acted as an officer of the law or a constable. I do not know that he had a warrant to execute. I did not see any warrant. I saw captain D'Orsonnens when he took his departure with his people for Lake la Pluie, and the cannon were embarked. They were mounted. Captain D'Orsonnens did not mount them; they were ready mounted, having been mounted by the North-West Company.

*It being past six o'clock, the Court was adjourned till to-morrow morning, at eight o'clock, A. M.*

*Wednesday, 27th May, 1818.*

PRESENT AS BEFORE.

*The Jury were called over and*

**MR. WILLIAM MORRISON, Sworn,**

*And examined by Mr. Vanselson.*

**Mr. Morrison.**—Mon nom est Guillaume Morrison. J'étois au Fort William au service du Nord-Ouest en 1816, et j'étois là quand l'lord Selkirk l'a pris en possession, et il y aura deux ans en Août prochain. Il fut pris par une bande d'hommes qui paroissoient en qualité de soldats, et qui étoient armés. Les armes étoient des fusils, avec des bayonnettes au bout. La première descente fut faite dans une berge qui portoit quinze ou vingt hommes, et le capitaine D'Orsonneus étoit avec eux. Quand ils étoient tous assemblés, il y avoit soixante ou quatre-vingt hommes. Il y avoit des officiers, et parmi eux le capitaine D'Orsonnens, qui étoit à la tête du parti en avance qui est entré le premier. Il avoit un sabre à son côté. Il y avoit un monsieur M'Pherson et monsieur M'Nabb; mais je ne sais pas s'ils étoient officiers. Lorsqu'ils sont entrés j'étois contre la porte du fort, à deux verges près de la porte. Je n'ai pas entendu parler le capitaine D'Orsonnens, mais j'ai entendu monsieur M'Donald, un des associés du Nord-Ouest, lui prier de se retirer, parcequ'il n'avoit rien à faire là, et que les gens, ou les agents, de la compagnie étoient absents. Le capitaine D'Orsonnens s'est viré là dessus. Il a parlé, à ses hommes, (dans une langue que je ne comprenois pas; ce n'étoit pas en Anglois); et ils ont sonné le bu-

gle, et cette force s'avançoit immédiatement dans le fort, au pas de charge, avec leur fusils et bayonnettes en avant. Monsieur M'Donald n'a pas fait de résistance. Je ne puis pas dire ce qu'ils ont fait dans le fort pour quelque tems, parceque j'en ai sorti. Le capitaine D'Orsonnens avois mis des gardes aux portes, et les gens du Nord-Ouest ne pouvoient ni entrer ni sortir pour quelque tems; cela a continué pendant trois ou quatre heures, quand tout étoit tranquille. Je sais que monsieur Daniel M'Kenzie a été emprisonné et je l'étois moi-même pour cinq ou six jours. Il y avoit un sentinelle chez moi, et un jour je regardois par la fenêtre, et j'ai vu le capitaine D'Orsonnens qui s'avançoit vers le sentinelle et lui demanda, "comment est ce que vous laissez votre prisonnier regarder par la fenêtre; faites les tenir leur gardes, et flambez leurs cervelles s'ils sont obstinés."— Quelques jours après le capitaine D'Orsonnens ayant assemblé tous les gens et les voyageurs du Nord-Ouest qui étoient alors au fort, nous a donné le choix de trois choses; premièrement, d'entrer (pour Milord Selkirk je suppose,) aux mêmes conditions que nous avions avec le Nord-Ouest, et d'aller hiverner dans l'intérieur, mais je ne sais pas pour qui; secondement, de faire un voyage au Lac la Pluie, ou troisièmement, de faire deux voyages aux Milles Lacs, et ensuite se retourner à Montréal.<sup>(54)</sup>

(54) My name is William Morrison. I was at Fort William in the service of the North-West, in 1816, and I was there when my Lord Selkirk took possession of it, and it will be two years next August. It was taken by a party of men, who appeared in the capacity of soldiers, and who were armed. The arms were musquets with fixed bayonets. The first approach was made in a barge which carried fifteen or twenty men, and captain D'Orsonnens was with them. When they were all together there were sixty or eighty men. There were officers too, and amongst them, captain D'Orsonnens, who was at the head of an

*Attorney-General.*—Your honour has already decided that all this long story is not evidence.—I submit that it is a very unnecessary waste of time.

*Chief Justice Sewell.*—I really do not see to what it tends, though I have been unwilling to interrupt the gentleman, expecting every minute that he would apply it to some part of the case.

*Mr. Vanfelson.*—My very next question will apply the whole of what has gone before in the strongest manner, and the Court will, I think, see that we have not unnecessarily occupied its time.

advanced party which entered the first. There was one Mr. M'Pherson, and Mr. M'Nabb; but I do not know whether they were officers. When they entered I was close to the gate of the fort, two yards from the gate. I did not hear captain D'Orsonnens say any thing, but I heard Mr. M'Donald, one of the North-West partners, request him to go back, as he had nothing to do there, and the people, or the agents, of the company were absent. Captain D'Orsonnens thereupon turned round. He spoke to his men in a language which I did not understand; it was not English; and they sounded the bugle, and this force advanced immediately into the fort, in double quick time, charging with their muskets and bayonets. Mr. M'Donald made no resistance. I can not say what they did in the fort for some time, because I went out of it. Captain D'Orsonnens placed guards at the gates, and the North-West people could not, for some time, either go in or out; this continued for three or four hours, when all became quiet. I know that Mr. Daniel Mackenzie was imprisoned, and I was imprisoned myself for five or six days. There was a sentinel placed over me, and one day, when I looked through the window, I saw captain D'Orsonnens, who advanced towards the sentinel and asked him, "how is it that you suffer your prisoners to look through their windows; make them keep within their bounds, and blow their brains out if they are obstinate." A few days afterwards captain D'Orsonnens, having assembled all the people, and the voyageurs of the North-West, who were then in the fort, gave us the choice of three things; first, to enter, (for my Lord Selkirk I suppose,) on the same terms as we had with the North-West, and to go and winter in the interior, but I do not know for whom; secondly, to go a voyage to Lake la Pluie; or thirdly, to go two voyages to the Thousand Lakes, and afterwards return to Montreal.



Qu'avez vous dit au capitaine D'Orsonnens quand il vous a donné ce choix de trois choses?

*Mr. Morrison.*—Je l'ai demandé s'il exigeoit cela? et il a répondu, "je vous le commande au nom du Roi." Il a dit aussi que nous n'avions besoin d'attendre nos bourgeois; qu'on ne leur reverroit jamais. L'Etang a été amené devant Milord Selkirk pour être examiné. Je suis bien certain qu'il m'a dit, "au nom du Roi, je vous le commande."<sup>(55)</sup>

*Cross-examination conducted by the Solicitor General.*

*Solicitor-General.*—Have your honours got down what this witness said at the commencement of his examination, viz.—that there were from twelve to fifteen men at first.

*Mr. Justice Bowen.*—I have from fifteen to twenty men, which was what he said.

*Solicitor General.*—It struck me that he said twelve to fifteen, but I certainly must have forgotten, as your honours notes say fifteen to twenty.

*Mr. Morrison.*—J'étois à une verge de la porte au tems qu'ils ont entré. Ils ont entré autant qu'ils ont pu par force. La porte n'étoit pas fermée. J'ai monté après a la Rivière Rouge, mais je n'ai jamais dit aux métifs, ni à qui que ce soit, que le Lord Selkirk étoit aux fers, ni qu'il étoit garrotté à Fort William. J'ai dit simplement que je l'y ai vu.<sup>(56)</sup>

<sup>(55)</sup> *Mr. V. F.*—What did you say to captain D'Orsonnens when he gave you the choice of these three things.

*W. M.*—I asked him whether he insisted upon that, and he answered, "I command it you in the King's name." He also told us that we had no need to wait for our bourgeois, for we should never see them again. L'Etang was carried before Lord Selkirk to be examined. I am very certain that he said to me, "I command it you in the King's name."

<sup>(56)</sup> I was one yard from the gate at the time that they entered. They entered, as much as they could, by force. The

*Attorney-General.*—I beg that it may be taken down.

*Mr. Morrison.*—Je n'ai jamais dit aux métifs ni à aucune autre personne que le Grand Chef, le Gouverneur, avoit envoyé des officiers pour mettre Milord Selkirk aux fers, mais j'ai dit qu'un connétable alloit monter avec un warrant pour prendre Milord Selkirk, à ce que j'avois entendu, et rien d'autre chose.

*Attorney-General.*—Regardez ce monsieur, (*Dr. Allan,*) le connoissez-vous?

*Mr. Morrison.*—Je le connois pour l'avoir vu, mais non pas par nom.

*Attorney-General.*—Ne l'avez-vous pas entendu appelé Doctor Allan?

*Mr. Morrison.*—Oui. Je l'ai entendu nommer Allan.

*Attorney-General.*—Doctor Allan. A-t-il entré au fort?

*Mr. Morrison.*—Doctor Allan n'étoit pas présent, à ma connoissance, quand le fort fut pris.<sup>(\*)</sup>

gate was not shut. I went up to the Red River afterwards, but I never told the half-breeds, nor any one whomsoever, that Lord Selkirk was in irons, nor that he was chained at Fort William. I simply said that I had seen him there.

(\*) *W. M.*—I never told the half-breeds, nor any other person, that the Great Chief, the Governor, had sent officers to put Lord Selkirk in irons, but I said that a constable was coming up with a warrant to take Lord Selkirk, as I had heard, and nothing else.

*A. G.*—Look at this gentleman, (*Dr. Allan,*) do you know him.

*W. M.*—I know him from having seen him, but not his name.

*A. G.*—Have you not heard him called Dr. Allan.

*W. M.*—Yes, I have heard him called Allan.

*A. G.*—Dr. Allan, did he enter the fort.

*W. M.*—Dr. Allan was not present, at least not to my knowledge, when the fort was taken.

JEAN CREBASSA, *Sworn,*

*And examined by Mr. Stuart.*

*J. Crebassa.*—Je suis commis de la Compagnie du Nord-Ouest, et j'étois tel en 1816, et auparavant. Mon poste en 1816 étoit à Bas de la Rivière Winnipic.

*Chief Justice Sewell.*—En quel mois de 1816?

*J. Crebassa.*—Dans les mois d'Aout et de Juillet. Monsieur Archibald M'Lellan étoit là, il a descendu d'Athabasca, et restoit à ce fort une partie de l'été. Il arriva quelque tems en Juillet. J'ai connoissance qu'un warrant avoit sorti contre un nommé Oliver Keveny au Bas de la Rivière.—C'étoit donné par monsieur Norman M'Leod dans le mois d'Aout. 1816, et je crois sur les plaintes portées par quelques gens qui étoient sous son commandement. Après j'ai vu Keveny au fort en Bas de la Rivière, au mois d'Aout.

*Mr. Stuart.*—Keveny, a-t-il été mené au fort par conséquence de son arrest en vertu du warrant que monsieur M'Leod a sorti? <sup>(58)</sup>

*Solicitor-General.*—The best evidence will be

<sup>(58)</sup> *J. C.*—I am a clerk of the North-West Company, and I was such in 1816, and before. My post in 1816, was at Bas de la Rivière Winnipic.

*C. J. S.*—In what month of 1816.

*J. C.*—In the months of August and July. Mr. Archibald M'Lellan was there. He came down from Athabasca, and remained at that fort part of the summer. He arrived some time in July. I know that a warrant had been issued against one named Oliver Keveny at Bas de la Rivière. It was granted by Mr. Norman M'Leod in the month of August, 1816, and I believe upon the complaints of some persons who were under his command. I afterwards saw Keveny at Fort Bas de la Rivière in the same month of August.

*Mr. S.*—Keveny, was he taken to the fort in consequence of his arrest, in virtue of the warrant which Mr. M'Leod had issued.

the warrant itself. My learned friend skips over the most material point, namely, the arrest of Mr. Keveny. To see a man after a warrant had been issued against him, is no proof that he was arrested upon it.

*Chief Justice Sewell.*—Ask him whether he saw him at Bas de la Rivière.

*Crebassa.*—Oui, je l'ai vu à Bas de la Rivière.<sup>(55)</sup>

*Attorney-General.*—Did you see the warrant?

*Crebassa.*—I saw the men go after the warrant had been granted by Mr. M'Leod.

*Attorney-General.*—That is no answer to my question. I ask you, upon your oath; did you see the warrant. Just say yes or no?

*Crebassa.*—No, I saw the men go and I heard they went with a warrant.

*Solicitor General.*—Then your honour sees it must all be struck out, for it amounts to nothing, being only hearsay evidence.

*Chief Justice Sewell.*—I do not know that, Mr. Solicitor General, this is not the first time we have heard of this warrant. Where, Mr. Crebassa, was this warrant issued?

*Crebassa.*—At Bas de la Rivière.

*Chief Justice Sewell.*—You say that you saw men go; who did you see go?

*Crebassa.*—De Reinhard and others.

*Chief Justice Sewell.*—Combien?

*Crebassa.*—Trois, à ce que je crois. J'ai entendu parler à De Reinhard d'exécuter un warrant avec trois hommes.<sup>(56)</sup>

*Mr. Justice Bowen.*—You say you saw Keveny come, when did he come, and who brought him?

(55) Yes, I saw him at Bas de la Rivière.

(56) C. J. S.—How many?

J. C.—Three, I believe, I heard De Reinhard spoke to, to execute a warrant with three men.

*Crebassa.*—Il étoit mené prisonnier par De Reinhard, le prisonnier a la barre, le même jour, à ce que je crois ; c'est-à-dire un nommé Keveny.

*Chief Justice Sewell.*—Où étoit monsieur M'Leod ?

*Crebassa.*—Monsieur M'Leod a parti, après qu'il sortit le warrant, pour Athabasca, le même jour ; il est parti avant que De Reinhard est revenu. <sup>(61)</sup>

*Examination resumed by Mr. Stuart.*

*Crebassa.*—Je ne connois pas le nom de baptême de ce Keveny, mais ses gens l'appelloient Oliver Keveny, à ce qu'on m'a dit. Monsieur M'Lellan étoit à ce fort dans le tems ; le fort de Bas de la Rivière. Monsieur M'Lellan et tous les gens du fort ont reçu Keveny amicalement. Keveny partit du Fort Lac la Pluie. Il fut envoyé au Fort William comme prisonnier. C'étoit le lendemain qu'il partit. Quelques jours après nous avons appris———<sup>(62)</sup>

*Mr. Justice Bowen.*—Who do you mean by *nous* ?

*Crebassa.*—Mr. M'Lellan, De Reinhard, myself, and others, who were at the fort of Bas de la Rivière. Quelques jours après nous avons appris que

<sup>(61)</sup> J. C.—He was brought in a prisoner by De Reinhard, the prisoner at the bar, the same day, I believe ; that is to say, a person named Keveny.

C. J. S.—Where was Mr. M'Leod ?

J. C.—Mr. M'Leod went away the same day, after he had issued the warrant, for Athabasca. He was gone before De Reinhard returned.

<sup>(62)</sup> I do not know the christian name of that Keveny, but his people called him Oliver Keveny, as I was told. Mr. M'Lellan was at that fort at the time ; the fort of Bas de la Rivière. Mr. M'Lellan and all the people of the fort received Keveny in a friendly way. Keveny went away from Fort Lake la Pluie. He was sent to Fort William as a prisoner. It was on the following day that he went away. A few days afterwards we learnt———

Fort William, le dépôt principal du Nord-Ouest, a-voit été pris par Milord Selkirk. De Reinhard y étoit dans le tems, et avoit connoissance de cette nouvelle, ainsi que moi. Monsieur Alexander M'Donell étoit alors à la Rivière Rouge, et il a reçu une lettre qu'on lui a envoyé pour l'informer de la prise du Fort William, et il est descendu en conséquence immédiatement au Bas de la Rivière.<sup>(63)</sup>

*Solicitor-General.*—How do you know that Mr. M'Donell knew it?

*J. Crebassa.*—Because I read the letter before it was sent.

*Examination continued by Mr. Stuart.*

*J. Crebassa.*—Après son arrivée il y avoit une consultation tenue pour savoir ce qu'on devoit faire en conséquence de la prise du Fort William, et en conséquence de cette consultation monsieur M'Lellan est parti en canot avec le prisonnier, De Reinhard, et d'autres personnes.

*Mr. Stuart.*—Pour quel objet? <sup>(64)</sup>

*Chief Justice Sewell.*—Who went with him besides?

*Mr. Stuart.*—I beg leave to remark that in cross-examination the Crown can extract from him any

<sup>(63)</sup> A few days afterwards we learnt that Fort William, the principal depot of the North-West Company had been taken by Lord Selkirk. De Reinhard was there at the time, and was acquainted with this intelligence, as well as myself. Mr. Alexander M'Donell was then at Red River, and he received a letter which was sent him to inform him of the capture of Fort William, and he came down immediately in consequence to Bas de la Rivière.

<sup>(64)</sup> *J. C.*—After his arrival a consultation was held as to what ought to be done in consequence of the capture of Fort William, and in consequence of this consultation, Mr. M'Lellan took his departure in a canoe with the prisoner, De Reinhard, and other persons.

*Mr. S.*—For what purpose?

evidence they think essential, but in producing our testimony to the Court, we have marked out to ourselves a certain course which it is extremely inconvenient to deviate from.

*Chief Justice Sewell.*—My only object in putting the question was to save time, and in one entry upon my notes, to have the particulars of the starting of this canoe, which may be a matter of some importance. If to the prejudice of the prisoner, or that it could interfere with your plan, I should not wish it put, but I do not see that it can possibly do the one or the other.

*Mr. Stuart.*—I will put the question certainly; who went with Mr. M'Lellan in the canoe, and what did they go for?

*J. Crebassa.*—Monsieur De Reinhard, monsieur Cadotte, monsieur Grant, et d'autres personnes, partoient dans le canot avec lui, et ils alloient voir s'ils ne rencontreroient pas des canots venant du Fort William avec les marchandises et équipements pour l'intérieur; c'est-à-dire pour voir si la communication de Fort William avec l'intérieur étoit ouverte ou non. Nous avions crainte que, Fort William ayant été pris, nos équipements, qu'on attendoit d'arriver alors, ne viendroient pas, et c'étoit un objet d'une très-grande conséquence pour nous. Dans ce pays on appelle les assemblées tenues pour consulter sur les affaires "des conseils," à l'imitation des Sauvages. J'étois présent à ce conseil, ou consultation, tenu à Bas de la Rivière, dont j'ai parlé auparavant. On n'y a pas parlé de Keveny à ma connoissance, mais s'ils ont parlé de tuer Keveny je m'en serois souvenu. Alexandre M'Donell, Archibald M'Lellan, Cuthbert Grant, Joseph Cadotte, moi-même, et Charles De Reinhard étoient présens.

*Mr. Justice Bowen.*—Y avoit-il d'autres?

*Crebassa.*—Oui, Monsieur, mais je ne me rap-

pelle pas les noms. C'étoit le seul conseil tenu là dans le tems, à ma connoissance, et comme commis principal, je crois qu'ils auroient eu assez de confiance de m'avoir appelé à aucun conseil tenu là, et je n'ai pas connoissance d'aucun autre conseil tenu là alors. Comme commis principal j'ai connoissance de ce conseil, et ce qu'y a été fait. Je n'ai pas connoissance qu'aucune personne à ce conseil a dit quelque chose de Keveny, et s'ils avoient parlé de Keveny, il faudroit que je le saurois. Quand monsieur Keveny est parti, j'ai entendu monsieur M'Lellan dire au monde qui le menoit "d'en avoir bien soin," et "de ne le pas faire de peine." Quatre ou cinq jours après le conseil, monsieur M'Donell s'est retourné à la Rivière Rouge, et en partant il m'a dit qu'on attendoit qu'en conséquence de la prise de Fort William, monsieur Keveny reviendrait au Bas de la Rivière, et que dans ce cas, je ferois bien de l'envoyer à la Rivière Rouge comme une place plus commode pour lui, et aussi où on avoit plus de vivres qu'à notre fort. <sup>(65)</sup>

(65) J. C.—Mr. De Reinhard, Mr. Cadotte, Mr. Grant, and other persons, went in the canoe with him, and they went to see whether they might not meet any canoes coming from Fort William, with the goods and equipments for the interior; that is to say, to see whether the communication between Fort William and the interior was open or not. We were afraid that, Fort William being taken, our equipments which were then expected to arrive, might not come, and it was a matter of very great consequence to us. In that country, the meetings which are held in order to consult on matters of business, are called "councils," in imitation of the Indians. I was present at this council, or consultation, held at Bas de la Rivière, of which I have spoken before. Nothing was said there about Keveny, to my knowledge, but if they had spoken of Keveny I should have remembered it. Alexander M'Donell, Archibald M'Lellan, Cuthbert Grant, Joseph Cadotte, myself, and Charles De Reinhard, were present.

Mr. J. B.—Were there any others?



*Cross-examination conducted by the Attorney-General.*

*J. Crebassa.*—I never saw the warrant of which I have spoken, nor can I say against whom it was issued, but as I have been told. The prisoner brought to the fort by De Reinhard answered to the name of Keveny. I never heard him answer to his christian name, but his people told me —

*Attorney-General.*—Do not tell us what you were told, only what you know yourself.

*J. Crebassa.*—J'ai vu le prisonnier Keveny, et je l'ai parlé. J'étois dans la chambre avec lui. Je ne sais pas de quel pays Keveny étoit; il étoit un grand homme <sup>(66)</sup> and of a fair complexion. He was sent from Bas de la Rivière by two small canoes, in the care of one Louis Lacerte, a guide and interpreter, who had the command. Lacerte is a Bois Brulé or half-breed. There were four or five others who went with him, but whose names I do

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*J. C.*—Yes, Sir, but I do not recollect their names. It was the only council held there at that period, to my knowledge, and as I was the principal clerk, I believe they would have had sufficient confidence in me to have called me to any council held there, and I have no knowledge of any other council then held there. As principal clerk I have a knowledge of this council and of what was done at it. I have no knowledge that any person said any thing at this council about Keveny, and if they had spoke of Keveny I must have known it. When Mr. Keveny went away, I heard Mr. M'Lellan say to the people who conducted him "to take good care of him," and "not to give him any offence." Four or five days after the council, Mr. M'Donnell returned to Red River, and on going away, he told me that it was expected that, in consequence of the capture of Fort William, Mr. Keveny would come back to Bas de la Rivière, and that in that case, I should do right in sending him to Red River, as a more convenient place for him, and also one where there were more provisions than at our fort.

<sup>(66)</sup> I saw the prisoner Keveny, and I spoke to him. I was in the room with him. I do not know what countryman Keveny was; he was a tall man.

not know. They were all half-breeds, or Bois Brulés.

*Attorney-General.*—Was he in irons?

*J. Crebassa.*—He was not, to my knowledge, in irons.

*Attorney-General.*—Did you see any irons in the canoe?

*J. Crebassa.*—I did not see any.

*Attorney-General.*—Will you swear that there were none?

*J. Crebassa.*—I will swear that I did not see any, and if there had been any I think I should have seen them.

*Attorney-General.*—Will you undertake to swear, that he was not in irons when he went away from Bas de la Rivière?

*J. Crebassa.*—Certainly I will, he was not in irons when he went away, and I never, at any time, saw him in irons. We had none at Bas de la Rivière. I never saw any there. He was sent from Bas de la Rivière to Fort William. His people told me he was accused of badly treating them, of stabbing some of them with a bayonet, but I did not see the wound. When Mr. Keveny was brought to Bas de la Rivière he had no baggage brought with him. After the departure of Keveny his barge with some baggage came to Bas de la Rivière, and I saw it. Son commis monsieur Collins, demanda permission à monsieur M'Lellan de la mettre dans un hangard. Il en a pris l'inventaire, et il l'a mis dedans. Je n'ai pas vu le mot de Keveny sur le butin, ni gravé sur un "writing-desk." (<sup>57</sup>)

*Attorney-General.*—Did you see a writing-desk?

*J. Crebassa.*—No.

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(<sup>57</sup>) His clerk, Mr. Collins, asked leave of Mr. M'Lellan to put it in an outhouse. He took an inventory of it, and it was put in. I did not see the word Keveny on the baggage, nor engraved on a writing desk.

*Chief Justice Sewell.*—Then I understand you that you did not see the name of Keveny on the baggage, neither printed, written, or engraved on a writing-desk.

*J. Crebassa.*—Yes.

*Attorney-General.*—Did you see any calves?

*J. Crebassa.*—Yes, there were four calves, which were killed and eaten by the Indians. I did not eat any of them. I swear that I did not eat any. I was present at the council of which I have spoken, as a member of it, but I did not give any vote. I was not asked, had I been asked I should have given my opinion. Those I have mentioned before were at the council, and I believe Mainville was present also, but I do not recollect right. I gave no vote for I was not asked, and I can not say whether Mainville did or not. There were other Bois Brulés at the council besides Mainville. L'objet de ce conseil étoit seulement d'envoyer des canots en avant, pour savoir si les canots avec les équipements alloient venir de Fort William ou non, parceque si on manque de marchandises pour traiter avec les Sauvages, et de saines, (fishing-nets,) il faut absolument qu'on périsse de faim. <sup>(\*)</sup>

*Mr. Stuart.*—I beg that may be taken down, it is very important, that, unless they received the supplies which they were expecting, they were exposed to absolute starvation.

*Attorney-General.*—I must ask you, upon the oath you have taken, had this council no other object than merely to send off a canoe.

*J. Crebassa.*—Le seul objet de ce conseil de commerce étoit pour considérer la propriété d'envoyer

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(\*) The object of this council was solely to send canoes forward, to know whether the canoes with the equipments were coming from Fort William or not, because if there is a want of goods to trade with the Indians, and of seines (fishing-nets,) we should absolutely be starved to death.

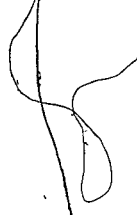

des canots pour voir s'ils ne rencontreroient pas des canots venant de Fort William, avec les marchandises et les équipemens, pour empêcher d'être affamé. Je ne puis pas dire que c'est la coutume pour les Bois Brulés de s'asseoir dans un conseil de commerce, mais je sais qu'ils furent appelés à cette occasion. Je n'ai pas entendu parler en conseil de Keveny. Le conseil s'asseyoit peut-être une demie heure. Je n'ai pas connoissance d'opposition à la mesure d'envoyer un canot. La proposition étoit faite par monsieur M'Lellan et monsieur M'Donell d'aller au Fort William, et personne l'a opposé. Monsieur M'Lellan demandoit qui vouloit aller de bon gré dans le canot. C'est tout ce qu'y a été fait. Quelques uns des bois brulés ont refusé d'y aller par paresse.<sup>(66)</sup>

*Attorney-General*.—Are you quite sure that nothing but idleness prevented them going. Did they not some of them assign a reason?

*Crebassa*.—I think it was nothing but idleness, because they none of them gave any reason, and I therefore took it to be idleness that prevented them. I know a bois brulé named La Pointe and he was at the council. I do not know that he refused to go, or that he gave his reasons for not going. I do not know of his making a speech at

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(66) The only object of this council of trade, was to consider of the propriety of sending canoes to see whether they might not meet canoes coming from Fort William with goods and the equipments, to avoid being famished. I can not say that it is the custom for the half-breeds to sit in a council of trade, but I know that they were called upon on this occasion. I did not hear Keveny spoke of in the council. The council sate perhaps for half an hour. I have no knowledge of any opposition to the measure of sending a canoe. The proposal was made by Mr. M'Lellan and Mr. M'Donell, to go to Fort William and no body opposed it. Mr. M'Lellan enquired who would volunteer to go in the canoe. This was all that was done. Some of the half-breeds refused to go from idleness.

the council, nor did I hear him say that he would not fight against the King's troops. I do not know his father, or that he was tried by a court martial for advising his son not to go. Mr. Archibald M'Lellan, Mr. Reinhard, Mr. Grant, and Mr. Cadotte, being partners or clerks of the North-West Company, together with Mainville, seven or eight other bois brulés, making, I believe, twelve altogether, went in the canoe. They were armed; each man had his gun, as is customary in that country. They had ball with them. Shot is the general ammunition in that country, but ball is also taken in case of meeting with large animals. To my knowledge there was not more ball or ammunition than ordinary. Each man had his gun and some ammunition. I did not see any war-pieces.

*Attorney-General.*—Did you hear any thing at this council about a war.

*Mr. Stuart.*—I object to that question as totally inadmissible.

*Attorney-General.*—I beg my learned friend's pardon, but I must know something more about this unlikely story of calling a council about sending off a canoe. It is a most unusual council, I think, attended by Bois Brulés, who, the witness says, are not in the habit of attending councils of commerce, though councils of war, I believe, they always do attend. My learned friend must really permit me to know something more of this most extraordinary council, held to determine whether a canoe should be sent off. What could the canoe do if it went? could it bring the thing that they expected any faster? or, if they were not coming, would a canoe being sent off make any alteration in the situation of those who were at Bas de la Rivière? it really appears to me a very mysterious business, to call a council and invite the Bois

Brulés to it, merely to deliberate whether a canoe should be sent off or not.

*Mr. Stuart.*—I think, and I am sure the Court will be with me in thinking, that it was very natural, when they had heard that the great line of communication was cut off between them and their principal depot, that they should be anxious whether they were to receive any supplies; for what does the witness say; “that unless they had merchandize to trade with the Indians, or nets to fish, that in that country they must inevitably starve.” To provide against such an alternative, or to have the earliest information of their real situation, was, I should think, quite reason enough for calling a council. The object for which the council assembled was a very natural one, and the witness most unequivocally says that it was confined exclusively to the consideration of the proper steps to be taken in consequence of the outrage which had deprived them of their principal depot, Fort William, and not to devise a retaliation of the aggression, or even to deliberate upon any plan, or any means of regaining that which was rightfully theirs.

*Chief Justice Sewell.*—We are continually going too much into these unfortunate companies’ disputes. Suppose, at this council, there had been a proposition of the kind your questions are hinting at, Mr. Attorney, how would it bear on the case? what would it prove that could vary this case in the smallest degree?

*Mr. Justice Bowen.*—Admit as a fact that they had determined to fight their way through, what effect does it have on this case?

*Attorney-General.*—I wish to prove that this council was not that innocent assemblage that it has been represented to be. I shall, however, merely put the direct question to him. Did you hear any thing at that council, relative to war? or was

there any thing said about it to your knowledge?

*J. Crebassa.*—Non. Non pas à ma connoissance.<sup>(7°)</sup>—The council was held ten or twelve days after Keveny, had been sent from Bas de la Rivière, and the canoe, with Mr. M'Lellan and the others, followed on in the same track, indeed there was no other communication. I did not see any baggage belonging to Mr. Keveny after the departure of Mr. M'Lellan, brought to Fort Bas de la Rivière.

*Mr. Stuart.*—I object to that, inasmuch as the prisoner was not there, and therefore it can not be evidence, though it may prejudice his cause.

*Attorney-General.*—I beg my learned friend's pardon, but this is testimony, and of a very direct nature, for I shall prove that some of Keveny's things were taken to the fort at Bas de la Rivière by one of the very persons in whose company he was left the last time he was seen by some of the witnesses who were examined on the part of the Crown. I shall prove that the Savage José, fils de Perdrix Blanche, took a part of Keveny's effects to Bas de la Rivière, a pretty strong circumstance I think. One, which, at least the jury are entitled to be acquainted with. I will put the question again, for I think the witness misunderstood me, as, I believe, he did see José bring the things I allude to.

A few days after M'Lellan departed to go and see if the canoes, with supplies from Fort William were coming, did José, fils de Perdrix Blanche, come to Bas de la Rivière, and did he bring any thing with him?

*J. Crebassa.*—Deux ou trois jours après le départ de monsieur M'Lellan, j'ai vu une valise et une cassette apportées au fort en Bas de la Rivière par José, fils de Perdrix Blanche, et un nommé

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(7°) No. Not to my knowledge.

L'Allemand, mais je n'ai pas vu le nom de Keveny dessous, ou je ne me souviens pas que je l'ai vu. Je les ai vu au bord de l'eau, et je ne sais pas ce qu'en est devenu. Je ne me souviens pas que c'étoit trois jours juste après.<sup>(71)</sup>—I do not know whether it was a week or a fortnight after Mr. M'Lellan went away, that the things came. I do not think it could be so long as a fortnight. Je ne puis pas dire qu'il n'étoit pas cinq ou six jours, mais je ne crois pas qu'il étoit quinze; mais je ne puis pas jurer qu'il n'étoit pas dix. Je pense qu'il étoit près de cinq ou six.<sup>(72)</sup>—At the time Keveny went away, I do not recollect that there were more partners or clerks present, than Mr. M'Lellan, De Reinhard and myself. There were two or three Canadians. Two Canadians who attended to the garden. The gentlemen there belonged generally to Lac la Pluie.

*Mr. Justice Bowen.*—Did De Reinhard go with the warrant the day it was given, and return the same day? and how happened it that Mr. M'Leod was not there?

*J. Crebassu.*—He had gone away to another post, to Athabasca, after granting the warrant, and before De Reinhard returned.

*Attorney-General.*—Could not Keveny have been kept at the fort till a better opportunity offered of sending him to Fort William?

(<sup>71</sup>) Two or three days after Mr. M'Lellan's departure, I saw a trunk and a box brought to the fort at Bas de la Rivière, by Joseph, fils de Perdrix Blanche, and a man named L'Allemand, but I did not see the name of Keveny upon them, or I do not recollect that I saw it. I saw them at the water-side, and I do not know what became of them. I do not recollect that it was exactly three days afterwards.

(<sup>72</sup>) I can not say that it was not five or six days, but I do not believe that it was fourteen; but I can not swear that it was not ten, I think that it was near upon five or six.



*Credassa.*—That was not my business; I had nothing to do with sending him.

*Attorney-General.*—I want to know if he could not have been kept at Bas de la Rivière. You have represented that Keveny was treated with friendship. Do you call it friendly to send him away with five bois brûlés? if you and I were there, and I should send you to Fort William, with five bois brûlés, would you call it friendly? it is usual to send men of his rank with bois brûlés? was there any necessity to send him off?

*Chief Justice Sewell.*—I think it is not put in the power of the magistrate to exercise a discretion upon that point. I believe the act only gives power to arrest and send the accused to Lower Canada for trial.

*Attorney-General.*—I merely want to know, whether or not he could have been kept, or whether, according to witness's opinion, it was an act of friendship to send a man of Mr. Keveny's rank with bois brûlés?

*Chief Justice Sewell.*—You must not do that; his opinion goes for nothing. You may ask him whether he could have been kept.

*Attorney-General.*—Well, I will put that question to him. Could Keveny have been kept at Bas de la Rivière? are there houses there? was De Reinhard there?

*Credassa.*—There were houses there, so that he might have stopped. De Reinhard was there. I consider that Mr. Keveny was treated with friendship.

*Attorney-General.*—In being sent with the bois brûlés?

*Mr. Stuart.*—They were bound to send him to Montreal, they could not keep him, they exposed themselves to a civil action if they detained him.

*A Juror.*—Avez vous connoissance que Main-

ville, De Reinhard, et Perdrix Blanche alloient dans le canot avec monsieur M'Lellan ?

*Crebassa.*—Oui, monsieur, ils alloient.

*A Juror.*—Avez vous connoissance qu'ils étoient envoyés dans le petit canot avec Keveny ?

*Crebassa.*—Non, monsieur, j'étois dans une autre place au tems. Je n'étois pas en haut de la rivière.

*A Juror.*—Avez vous entendu, ou avez vous connoissance d'un bruit de guerre au tems que le conseil s'est tenu ?

*Crebassa.*—Non, monsieur, je n'en ai pas entendu.<sup>(73)</sup>

*Mr. Stuart.*—Perhaps it will be well to explain to the witness, what the juror means; he perhaps may think he alludes to a public war, for he certainly had heard of the taking of Fort William.

*J. Crebassa.*—J'ai entendu les nouvelles de la prise du Fort William; mais il n'y avoit aucun bruit qu'il y avoit une guerre dans le pays en deça du Bas de la Rivière, à l'exception que nous avons reçu les nouvelles de la prise de Fort William.<sup>(74)</sup>

*Attorney-General.*—Had you not heard of the death of governor Semple ?

<sup>(73)</sup> *Juror.*—Have you a knowledge that Mainville, De Reinhard, and Perdrix Blanche, went in the canoe with Mr. M'Lellan ?

*J. C.*—Yes, Sir, they went.

*Juror.*—Have you a knowledge that they were sent in the small canoe with Keveny ?

*J. C.*—No, Sir, I was in another place at the time. I was not in the upper part of the river.

*Juror.*—Did you hear, or have you any knowledge, of a rumour of war, at the time the council was held ?

*J. C.*—No, Sir, I did not hear any.

<sup>(74)</sup> I heard of the capture of Fort William; but there was no report of the existence of a war in the country below Bas de la Rivière, with the exception that we had received intelligence of the taking of Fort William.

*Chief Justice Sewell.*—I will not suffer it, Mr. Attorney-General. It has nothing at all to do with this trial. I will read to the jury his answers to their questions, as I have taken them; “il n’y avoit aucun bruit qu’il y avoit de guerre dans le pays en deça du Bas de la Rivière, à l’exception que nous avons entendu, dans ce tems là, de la prise du Fort William, comme j’ai déjà dit.” (11)

**MICHAEL CHRETIEN, Sworn,**

*And examined by Mr. Vallière de St. Réal.*

*Chretien.*—J’étois en l’été de l’année 1816, au service de la société du Nord-Ouest en qualité d’un engagé. J’étois cette année au Lac la Pluie au tems que monsieur Alexander Stuart arriva là d’Athabasca, à ce que je crois, mais je ne sais pas pour le sur, qu’il est arrivé d’Athabasca. Environ peut-être dix jours après qu’il arriva, nous avons entendu que le Fort William étoit pris par les gens du Milord Selkirk, et avant ce tems là, ce fort étoit en possession du Nord-Ouest. Je sais qu’après ce tems là, le second d’Août—vers le St. Michel—le second d’Octobre, le capitaine D’Orsonnens est arrivé au fort du Lac la Pluie, et que avant son arrivée monsieur M’Donald, un nommé Bonaire, et monsieur Nolin, arrivoient au Fort Lac de la Pluie. Ils ont entrés et pris monsieur Sayer prisonnier. Monsieur Sayer étoit au lit, et ils entroient dans sa chambre, et l’ont pris prisonnier au nom du Roi; disant; “nous vous prenons prisonnier de la part du Roi.” A ce tems j’étois en dehors de cette chambre là. Je n’étois pas dans la chambre, mais j’étois à la porte, où je pouvois

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(11) There was no report of any war in the country below Bas de la Rivière, with the exception that we had heard at that time of the taking of Fort William, as I have already said.

voir, et je les lui ai vu prendre, et j'ai entendu dire, "nous vous prenons prisonnier de la part du Roi." Monsieur M'Donald a demandé où étoit monsieur De Reinhard, mais je n'ai pas entendu la réponse. Il est entré tout de suite dans la maison où De Reinhard étoit; et je les ai vu, mais je n'étois pas dans la maison de De Reinhard, parceque dans ce moment je cherchois une chaudière à la maison de monsieur Sayer. Je fus ensuite dans la maison de De Reinhard, où j'ai vu monsieur M'Donald avec des armes gardant monsieur De Reinhard. Son fusil étoit contre la muraille. Dans ce moment je ne savois pas qu'une force des gens de Milord Selkirk étoit au fort du Lac la Pluie, ou au portage. Dans l'après midi le nommé Guillaume arriva avec, peut-être, vingt des Meurons. Auparavant dans le cours de la journée, et vers deux heures, trois ou quatre Meurons avoient arrivés, et après, à le soleil couché, ou environ, les autres sont venus trouver monsieur M'Donald. Je n'ai pas entendu ces trois ou quatre parler en menace à De Reinhard. (76)

(76) In the summer of 1816, I was in the service of the North-West Company, in the capacity of an engagé. I was in that year at Lake la Pluie, at the time when Mr. Alexander Stuart arrived there from Athabasca, as I believe, but I do not know for certain that he came from Athabasca. About perhaps ten days after he came, we heard that Fort William was taken by the people of my Lord Selkirk, and before that period, that fort was in the possession of the North-West. I know that after that time, on the second of August—towards Michaelmas—on the second of October, captain D'Orsonnens came to the fort of Lake la Pluie, and that before his arrival Mr. M'Donald, one named Bonaire, and Mr. Nolin, arrived at Fort Lake la Pluie. They entered and took Mr. Sayer prisoner. Mr. Sayer was in bed, and they went into his room, and took him prisoner in the King's name, saying "we take you prisoner in the name of the King." At that time I was outside of that room, but I was at the door, where I could see, and I saw them take him, and heard say the words, "we take you prisoner in the name of the

*Chief Justice Sewell.*—What is that to prove?

*Mr. Vallière de St. Réal.*—I am going to prove, as a fact, that these Meurons used menaces against De Reinhard.

*Solicitor General.*—The learned gentleman must first prove that the prisoner heard them.

*Mr. Vallière de St. Réal.*—I will put the question to him. What did you hear the Meurons say of De Reinhard? (*which question being repeated in French.*)

*Solicitor General.*—I object, and beg my learned friend's pardon, but that will not do, it is not what they said of De Reinhard, but what they said to him, that is evidence.

*Chief Justice Sewell.*—You had better put the question generally, whether these men threatened De Reinhard, and if De Reinhard heard them. (*which question being put.*)

*Chretien.*—Il y avoit des Meurons, et je les ai entendu faire des menaces contre De Reinhard, et je pense que De Reinhard les a entendu. Je le crois.<sup>(77)</sup>

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King." Mr. M'Donald asked where Mr. De Reinhard was, but I did not hear the answer. He immediately went into the house where De Reinhard was, and I saw them, but I was not in De Reinhard's house, because at that instant I went to fetch a kettle in Mr. Sayer's house. I afterwards went into De Reinhard's house, where I saw Mr. M'Donald with his arms guarding Mr. De Reinhard. His gun was against the wall. At that instant I did not know that a force consisting of the people of my Lord Selkirk was at the fort of Lake la Pluie, or at the portage. In the afternoon the person named Guillaume arrived, with, perhaps, twenty Meurons. Before, and in the course of the day, about three o'clock, three or four Meurons had made their appearance, and afterwards, at sunset, or thereabouts, the others came to join Mr. M'Donald. I did not hear these three or four speak in a threatening way to De Reinhard.

<sup>(77)</sup> There were Meurons there, and I heard them make use of threats against De Reinhard, and I think that De Reinhard heard them. I believe it.

*Solicitor General.*—You honours will recollect that, last time, we were not permitted to go into evidence of a conversation that took place in presence of M'Lellan, because the witness would not swear that he heard it. I therefore think that this is not evidence; he merely speaks to his belief.

*Chief Justice Sewell.*—I do not know that this is a parallel case.

*Mr. Justice Bowen.*—There is one point that strikes me as being important to ascertain, namely, the time when this took place. If the evidence is favourable to the prisoner, there is no man can be more anxious than I am that it should be taken. But till the time is fixed, we do not see whether or not, it bears on the case.

*Mr. Vallière de St. Réal.*—Les vingt Meurons, quand arrivoient ils ?

*Chretien.*—C'étoit au soir, vers le soleil couché, et ils étoient en partie à la porte, et en partie dans la maison. Le capitaine D'Orsonnens arriva à deux heures dans l'après midi. Ces vingt hommes étoient avec capitaine D'Orsonnens. C'étoit midi ou une heure, quand les quatre Meurons sont premièrement arrivés. C'étoit une heure auparavant que le capitaine D'Orsonnens arriva. Les vingt hommes sont arrivés avec le capitaine D'Orsonnens au soir, mais je ne sais pas s'ils sont venus avec lui la première fois, c'est-à-dire à deux heures.

*Chief Justice Sewell.*—Vous avez dit qu'on arrivoit avec le capitaine D'Orsonnens.

*Chretien.*—Les vingt hommes ont accompagné le capitaine D'Orsonnens au soir, mais je n'ai pas entendu qu'ils sont venus à deux heures.<sup>(7<sup>a</sup>)</sup>

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<sup>(7<sup>a</sup>)</sup> *Mr. V. de St. R.*—The twenty Meurons, when did they arrive ?

*M. C.*—It was in the evening, towards sunset, and they were

*Chief Justice Sewell.*—There is certainly some mistake or contradiction. He said just now these men came with captain D'Orsonnens. I will read to you what I have taken on the subject of these Meurons. “ Dans l'après midi le nommé Guillaume, un Meuron, arriva au fort, avec une vingtaine d'hommes, et auparavant, vers deux heures de l'après midi, il arrivoit trois ou quatre Meurons avec monsieur M'Donald. Ils sont venus trouver monsieur M'Donald au fort le soir, le soleil couché, ou environ. J'ai entendu des menaces faites par les Meurons contre De Reinhard. Ils étoient alors à la porte, et dans la maison où De Reinhard étoit. La vingtaine d'hommes sont arrivés avec le capitaine D'Orsonnens, vers deux heures de l'après midi.”<sup>(79)</sup> That was his evidence as I have taken it, and as he gave it.

*Mr. Vallère de St. Réal.*—I think that your honour has taken what he said relative to captain

partly at the door, and partly in the house. Captain D'Orsonnens came at two o'clock in the afternoon. The twenty men were with captain D'Orsonnens. It was one hour before that, that captain D'Orsonnens arrived. The twenty men came with captain D'Orsonnens in the evening, but I do not know whether they came with him the first time, that is at two o'clock.

*C. J. S.*—You said that it was with captain D'Orsonnens they came.

*M. C.*—The twenty men accompanied captain D'Orsonnens in the evening, but I did not understand that they had come at two o'clock.

<sup>(79)</sup> “ In the afternoon the person named Guillaume, a Meuron, arrived at the fort, with a score of men, and before, about two o'clock in the afternoon, three or four Meurons had arrived with Mr. M'Donald. They came to join Mr. M'Donald at the fort in the evening, at sunset, or thereabouts. I heard threats made use of by the Meurons against De Reinhard. They were then at the door and in the house where De Reinhard was. The twenty men came with captain D'Orsonnens, about two o'clock in the afternoon.”

D'Orsonnens's arriving.—His answers were certainly not very distinct, but I believe he did not mean to say, that these Meurons arrived with him, when he came first at two o'clock.

*Chief Justice Sewell.*—I can not tell what he means but by what he says, and he said that.—My brother Bowen's notes agree with mine.

*Some of the jury intimating that they had not so understood the witness.*

*Chief Justice Sewell.*—There is a short-hand writer in the Court; we can refer to him. Mr. Simpson, do your notes accord with those I have read? Read yours if you please.

*Mr. Simpson.*—They do not, your honour, exactly agree with your notes. I make him merely to say, that they were with captain D'Orsonnens in the former part of the testimony. "Ces vingt hommes mes étoient avec le capitaine D'Orsonnens,"<sup>(80)</sup> without any specification as to time, or to their coming; in the latter part of his evidence, I represent him as saying, that they came with captain D'Orsonnens towards evening, which was the second time of captain D'Orsonnens coming, as I understand him. *Mr. Simpson read his notes from the question of Mr. Vallière de St. Réal*—"Ces vingt Meurons quand arrivoient ils?"<sup>(81)</sup> *And the jury and prisoner's counsel said that was the manner in which they had understood the witness.*

*Chief Justice Sewell.*—The witness must be examined more slowly, for I am determined in future to take down every word. He certainly did say that they arrived with captain D'Orsonnens at two o'clock. It is on both our notes, and I can not strike it out. I do not know that it is of any great importance.

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(80) These twenty men were with captain D'Orsonnens.

(81) These twenty Meurons, when did they arrive?



*Examination resumed by Mr. Vallière de St. Réal.*

*Chretien.*—J'ai entendu les Meurons dire, "qu'ils entroient au fort pour chercher un nommé De Reinhard, et que s'il n'alloit pas au portage du Lac la Pluie, où étoit leur camp, de sa bonne volonté, qu'ils le prendroient par force."

*Chief Justice Sewell.*—A quelle heure?

*Chretien.*—C'étoit vers le soleil couché, à la bruyante, vers le soleil couché. "On le tient à présent," disoient-ils, "auterfois il avoit soin de nous dans le régiment, il nous fesoit tailler, maintenant nous allons avoir soin de lui." Ils ne disoient pas pourquoi ils voudroient le mener au portage. Ils l'ont amené au portage ce même soir là. Ils étoient armés, tous les hommes qui sont venus au fort étoient armés avec des fusils. Nous étions tous ensemble, mais je ne puis pas dire si De Reinhard l'a entendu, parceque je ne sais pas pour le sur. Peut-être qu'il l'a entendu, peut-être non, ils étoient tous dans une bande. De Reinhard étoit dans sa chambre, la porte ouverte, et j'étois dans la cuisine, et je l'ai entendu, et je pense dans ma conscience que De Reinhard les a entendu. Il étoit aussi proche d'eux comme moi. Le capitaine D'Orsonnens étoit à ce tems dans la même maison, mais je ne l'ai pas vu dans la même chambre avec De Reinhard. Je n'ai pas aucune connoissance d'une dispute entre le capitaine D'Orsonnens et De Reinhard. Tous sont sortis ensemble, De Reinhard, capitaine D'Orsonnens, et les tous, sont partis pour le portage du Lac la Pluie. De Reinhard paroissoit avoir l'air chagrin. Ces Meurons étoient sérieusement fâchés contre lui, et par leur discours il me paroissoit qu'ils le haïssoient. <sup>(\*)</sup>

(\*) *M. G.*—I heard the Meurons say, that "they had entered the fort to seek for one De Reinhard, and that if he did

*Chief Justice Sewell.*—What has this to do with it. We are not trying twenty Meurons.

*Mr. Vallière de St. Réal.*—We wish to shew their disposition towards De Reinhard, and that threats were made use to him.

*Chief Justice Sewell.*—You must recollect that he had made his declaration previously to captain D'Orsonnens, and had been taken up as a murderer upon his own confession. You may shew any thing that induced him to make that confession, but subsequent events could not influence it.

*Mr. Vallière de St. Réal.*—A-t-il vous défendu de sortir du fort ?

*Chretien.*—Il nous a défendu de nous en aller.<sup>(<sup>s 2</sup>)</sup>

"not go to the portage of Lake la Pluie, where their camp was, of his own free will, they would take him by force."

*C. J. S.*—At what o'clock ?

*M. C.*—It was about sunset, at dusk, about sunset. "We have him now," said they, "formerly he took care of us in the regiment, he made us smart, but now we are going to take care of him." They did not say why they wanted to take him to the portage. They took him to the portage that same evening. They were armed, all the men who came to the fort were armed with guns. We were all together, but I can not say whether De Reinhard heard it, because I do not know it for certain. Perhaps he heard it, perhaps not, they were all in a troop. De Reinhard was in his room, the door open, and I was in the kitchen, and I heard it, and I believe in my conscience that De Reinhard heard them. He was as near to them as I was. Captain D'Orsonnens was at the time in the same house, but I did not see him in the same room with De Reinhard. I have not any knowledge of a quarrel between captain D'Orsonnens and De Reinhard. All went out together, De Reinhard, captain D'Orsonnens, and all of them, went away together to the portage of Lake la Pluie. De Reinhard appeared to have a melancholy air. These Meurons seemed to be seriously irritated against him, and by their language it appeared to me that they hated him.

<sup>(<sup>s 2</sup>)</sup> *Mr. V. de St. R.*—Did he prohibit you from leaving the fort ?

*M. C.*—He prohibited us to go away.

*Chief Justice Sewell.*—What can be your object, in wishing to go into evidence of subsequent events? They certainly can not be brought to bear on this question.

*Mr. Vallière de St. Réal.*—Yes, your honour, I think they will. Our object in thus examining the witness is the same as we yesterday had the honour of submitting to the Court. This course of examination is intended to rebut the evidence of captain D'Orsonnens, who represented himself as a completely disinterested individual, and as it affects the credibility of a witness on the part of the Crown, we consider it material that we should be allowed to shew that he uniformly appeared in a very different manner from that of a disinterested person.

*Examination resumed by Mr. Vallière de St. Réal.*

*Chretien.*—Le lendemain ou sur-lendemain, le capitaine D'Orsonnens nous a tous assemblés dans la chambre de monsieur Dease, et nous a fait défense de traiter avec les natifs, ou de mettre pied sur l'eau pour pêcher, ou de faire la chasse, ni autrement, et que si on le fesoit, le premier coup qu'il tireroit, seroit en l'air, et le second pour nous couler au fond. Le capitaine D'Orsonnens portoit toujours un surtout gris avec un sabre à son côté. Je ne l'ai pas vu porter une uniforme rouge. Il nous a dit qu'il nous permettroit de rester pour six mois, mais ils falloit s'en aller de dedans le fort. Je sais que le capitaine D'Orsonnens a pris l'ammunition, la poudre et les balles, et tout le boisson qui étoient dans le fort. Il disoit que la raison en étoit que le fort n'appartenoit pas aux messieurs du Nord-Ouest, mais à sa Majesté et au Gouvernement. Il nous a offert des terres là, où on vouloit en prendre, et nous a dit qu'il avoit la maîtrise pour

en donner, et qu'une partie des messieurs du Nord-Ouest seroit pendue, et l'autre partie seroit chassée du pays, "mais vous serez bien avec nous autres." La Compagnie du Nord-Ouest étoient les bourgeois de monsieur De Reinhard. Capitaine D'Orsonnens m'a dit aussi qu'autrefois il n'y avoit pas des loix dans ce pays, mais qu'on faisoit comme on vouloit, mais que cela ne seroit pas le même à présent, parcequ'il étoit venu pour établir les loix. Il m'envoyoit chercher pendant que je brûlois quelques papiers, des vieux papiers, qui trainoient, à ma connoissance, depuis long-tems, dans un hangard, par ordre de monsieur Dease. J'ai été à lui. Je l'ai trouvé avec son sabre à son côté. Il m'a commandé de dire la vérité, qu'il avoit autant de force qu'un magistrat, et que si je ne disois pas la vérité qu'il me passeroit son sabre au travers du corps, qu'il me trancheroit la tête, ou que je serois pendu. Quelques minutes après il a ordonné qu'on montoit une tente, où il m'a mis, disant que je resterois là, "jusqu'à ce que vous partirez pour York, "et là, si vous ne declarez pas la vérité, vous serez pendu," que je ne connoissois par la conséquence de brûler ces papiers. Il m'a laissé là jusqu'au lendemain au soir avec un sentinelle à ma tente. Ceci s'est passé deux ou trois, peut-être quatre, jours après que De Reinhard fut emprisonné. On pourroit voir du fort une demie lieue vers le portage, et pendant le tems que j'ai été emprisonné, j'ai vu débarquer au camp au portage, deux pièces de canon de cuivre montées sur leurs affûts. Je les ai vu auparavant montées sur la barque de Fort William, et je les ai bien reconnu pour les mêmes. Il y avoit une pile de boulets arrangée au camp contre les canons. J'ai connoissance qu'ensuite le capitaine D'Orsonnens a pris possession de tous les effets qui étoient dans le fort et qui appartennoient au Nord-Ouest, dont il a fait un

inventaire. Le lendemain j'ai descendu pour Fort William. De Reinhard est descendu auparavant, plusieurs jours auparavant, Faye et La Pointe furent envoyés en même tems.

*Mr. Justice Bowen.*—Combien de jours auparavant?

*Chretien.*—Je ne puis pas dire. Quand je suis arrivé au Fort William, j'ai trouvé De Reinhard prisonnier. Il étoit gardé par un Meuron à sa porte, armé quelquefois d'une bayonnette, quelquefois des pistolets, quelquefois d'un fusil. Au bout de deux ou trois jous il fut enlarged, et permis d'aller et venir au large dans le fort. Le sentinelle étoit ôté. (")

(") *M. C.*—The next day, or the day after, captain D'Orsonnens called us all together in the apartment of Mr. Dease, and ordered us not to trade with the natives, nor to go on the water to fish, nor to go out a hunting, or otherwise ; and that if we did so, the first shot he would fire would be in the air, and the second to sink us. Captain D'Orsonnens constantly wore a grey great coat with a sword by his side. I did not see him wear a red uniform. He told us that he would allow us to remain there for six months, but that we must go out of the fort. I know that captain D'Orsonnens took the ammunition, the powder and the ball, and all the liquor there was in the fort. He gave for a reason that the fort did not belong to the gentlemen of the North-West, but to His Majesty, and to the government. He offered to give us lands there, wherever we chose to take them, and told us that he held the freehold so that he could give them, and that part of the gentlemen of the North-West would be hung, and the other part would be driven from the country, "but you will be well off with us." The North-West Company were the employers of Mr. De Reinhard. Captain D'Orsonnens told me also, that formerly there were no laws in that country, but that every one did as he liked, but that it would not be the same now, because he had come to establish laws. He sent to fetch me while I was burning some papers, old papers, which, to my knowledge, had been lying about for a long while, in an out-house, by order of Mr. Dease. I went to him. I found him with his sword by his side. He commanded me to tell the truth, saying that he had as much power as a magistrate, and that if I did not speak the truth, he would run his sword through my body.

*Chief Justice Sewell.*—Were there sentinels at the outside door of the fort?

*Chretien.*—Oui, il y avoient des sentinelles en dehors du fort. Pendant le cours de l'hiver il sortoit une fois avec un de ses camarades à l'autre côté de la rivière. J'ai arrivé au Fort William le premier de Novembre, le jour des Toussaints, et c'étoit deux ou trois jours après qu'ils ont laissé De Reinhard se promener dans le fort. J'ai connoissance que De Reinhard a tenu une école pendant l'hiver dans le Fort William, et Milord étoit le maître du fort dans ce tems là.<sup>(\*)</sup>

that he would cut off my head, or that I should be hung. A few minutes after, he ordered a tent to be pitched, into which he put me, saying that I should remain there, "until you take your departure for York, and if you do not declare the truth there, you will be hung," that I did not know the consequence of burning those papers. He let me remain there till the following day in the evening, with a sentinel at my tent. One can see from the fort for half a league towards the portage, and during the time that I was imprisoned, I saw two pieces of brass cannon, mounted upon their carriages, landed at the camp at the portage. I had seen them before mounted upon the vessel of Fort William, and I perfectly recognized them to be the same. There was a pile of balls placed at the camp next to the cannon. I know that afterwards captain D'Orsonnens took possession of all the effects which were in the fort, and which belonged to the North-West, of which he took an inventory. The next day I went away for Fort William. De Reinhard went down before, several days before, and Faye and La Pointe were sent at the same time.

*Mr. J. B.*—How many days before?

*M. C.*—I can not tell. When I arrived at Fort William, I found De Reinhard a prisoner. He was guarded by a Meuron placed at his door, armed sometimes with a bayonet, sometimes with pistols, sometimes with a gun. At the end of two or three days he was enlarged, and permitted to go and come at large within the fort. The sentinel was taken away.

<sup>(\*)</sup> Yes, there were sentinels outside of the fort. During the course of the winter he went out one time with one of his comrades to the other side of the river. I arrived at Fort William on the first of November, Allsaints-day, and it was two or

*Mr. Vallière de St. Réal.*—Avez vous connoissance que monsieur Dease a été pris par force devant Milord Selkirk pour signer un papier. (\*\*)

*Solicitor General.*—The course my learned friend has taken to disprove a confession, is, I think, a very singular one, namely, to prove that the conduct of the magistrate before whom it was made, may have been wrong in other cases. Can this be admitted? that a magistrate's general conduct can be examined into, or indeed his conduct even in any particular act, however connected with the transaction, is a position, I think, completely untenable. What difference is point of fact is made, how is the genuineness of the confession affected, by the manner in which one of the witnesses was led to sign the paper? he did sign it, and whether he did so voluntarily or by force, can not alter the confession itself, which was the deliberate act of the prisoner, previously prepared in his own hand writing, and thus prepared, its delivery to the Earl of Selkirk, as his confession of the part which he had taken in the murder of Mr. Keveny, is witnessed by four persons, and what possible difference can the manner in which they happened to become witnesses, make as to the contents of the confession? not a particle.

*Mr. Justice Bowen.*—In admitting this confession, it should be recollected, that we did not allow that part of it which is subsequent to the signature. We excluded that part beginning, "before Thomas, Earl of Selkirk." There are no

three days after that that they suffered De Reinhard to walk about the fort. I have a knowledge that De Reinhard kept a school during the winter at Fort William, and my Lord was the master of the fort at that time.

(\*\*) Have you any knowledge that Mr. Dease was taken by force before my Lord Selkirk to sign a paper?

witnesses to the confession as we have received it; the four witnesses are to a part which the Court have disallowed, which they have rejected. The fact that, at a certain day, De Reinhard was a prisoner, and that at another, he was free, is a fact proper for you to lay before the jury, and they may, if they think proper, connect this liberation with the confession. But, after we yesterday, on the examination of Dr. Allan, refused to permit the officers of the Crown to prove the subsequent part of the paper, what possible use can it be to go into an examination as to the manner in which rejected testimony might have been obtained?

*Mr. Stuart.*—We submit, as we are always bound to submit, to the judgement of the Court, though at variance with our preconceived opinions, but, in illustration of why we thought this question to be within the limits of evidence, the Court will perhaps indulge me with the liberty of making two or three observations. Dr. Allan stated in his evidence that Mr. Dease, a clerk in the same employ as the prisoner, attended at the delivery of this paper to the Earl of Selkirk by De Reinhard. From that want of candour, fairness, and frankness, which runs through the entire transaction, (I beg not for a moment to impute this line of conduct to the learned Crown officers, for far indeed are they removed from a capability to adopt any course that could warrant such an imputation,) but I do say, from the total absence of any thing like candour in those who are at the back of this prosecution, the natural inference which the jury would draw would be, that Mr. Dease attended voluntarily. The additional weight given to the paper by the signature of a confidential clerk to the North-West Company, attesting that in his presence this confession



was made, can not for a moment be overlooked, for if such a person was voluntarily present, making no objection, the evident presumption would be that every thing, being perfectly fair, the testimony was irresistible. If, instead of this, we prove he was dragged there by four Meuron soldiers, who were in the pay of the very magistrate before whom the confession was made, we, I think, account for the finding of a clerk of the North-West Company's name to a confession made before the Earl of Selkirk, and at the same time destroy any supposed validity attached to such a paper by the circumstance. We now wish to prove by this witness that the signature of Mr. Dease—

*Chief Justice Sewell.*—No. Mr. Stuart —

*Mr. Stuart.*—I really beg pardon of the Court. I wish to prove that this pretended examination, which is detailed on the paper received by the Court, is not entitled to credit, and that the pains taken to give it the semblance of extraordinary fairness, is nothing more than a part of that plot of which the machinery was already prepared, the mine was ready to be blown, the train was laid, so that nothing was necessary but to apply the torch, nothing required, but to have the paper already manufactured, signed by the unfortunate De Reinhard, whose power of refusing, whose freedom of mind, may be well estimated, if we prove that those who witnessed the delivery were not there accidentally, or voluntarily upon an invitation, but were dragged before the noble Earl of Selkirk, the private prosecutor, by four Meuron soldiers in his own pay. We do think, that, as such a circumstance can not fail to involve the voluntariness of the confession in doubt, we might be permitted to prove it, and as we considered it could produce an essential benefit to the prisoner;

we felt bound to urge the question to the Court.

*Chief Justice Sewell.*—For my own part, I can not see it, if I could, I most cheerfully and certainly would. Let us turn, for a moment, to the evidence of Dr. Allan. He says he was present before De Reinhard signed or delivered the paper to Lord Selkirk, that Mr. Dease was also sent for to be present, that upon his arrival the paper was handed to him, that he read it to himself, and asked the prisoner, "if it was true," De Reinhard answering that "the contents were true." He is further asked, "do you wish to add to, or take away from, or alter, any part of the contents," and he answers, "no, I do not." Now, remote as the circumstance is, it does not apply to any thing that is allowed as evidence against the prisoner, but had the attestation been admitted, what difference could it make to what De Reinhard did, that one of the witnesses went with, or was even taken against his inclination by, four soldiers? we should be happy to receive any thing, gentlemen, which you, in the exercise of your judgements, may think proper to offer, but our conduct must be bound, our inclination must be limited, by rules of law. God forbid that we should exclude any thing which we think we can admit, consistently with sound legal principles, but in this instance I can not.

*Mr. Justice Bowen.*—How you change your grounds for putting this question. I ought not to use such an expression, for perhaps, I misunderstand you. When the Crown officers objected to your question, it was because you was going to shew, that Dease was himself a prisoner, and from that to lead the jury to infer that the magistrate, acting wrong in one instance, he would do so in another, and upon that point I certainly consider the objection good. But, if, as you now

say, you only wish to prove that Mr. Dease was not a voluntary witness, as it is in evidence that he was present, I think you can, but no farther than just that fact do I think you can use the question.

*Mr. Vanfelson.*—We have no wish to use it farther. We merely wish to prove that such was the system of lawless violence and outrage carried on in that country, that every thing was done by force, and that opposition was useless as military authority awed it down.

*Chief Justice Sewell.*—I do not see what benefit is to result from the enquiry. Acts of violence, of military aggression, are proved, indisputably proved, beyond a doubt, and so, unless some very strong circumstances appear to change our opinion, we shall charge the jury. There therefore can be no necessity to go any farther.

*Mr. Stuart.*—Under this view of the subject taken by the Court, we have done with this witness.

*Attorney-General.*—After what has fallen from the Court, we shall certainly feel it our duty to prove that this was not a military force, and that no greater violence was used than what opposition to legal measures rendered necessary; therefore the defence had better perhaps at once prove it, if they can, because we are prepared to overturn it.

*Chief Justice Sewell.*—To prove what, or overturn what? what possible difference can it make to the abstract fact of the confession, whether Dease was a voluntary witness or otherwise? it does not influence my opinion in the smallest degree.

*Cross-examination conducted by the Attorney-General.*

*Chretien.*—La conversation des Meurons de qui j'ai parlé étoit entre eux-mêmes, quelques uns par-

loient François, quelques uns Allemand, ils n'étoient pas ensemble. De Reinhard n'étoit pas lié. Je n'ai pas été plus bas que Fort William. J'ai vu le capitaine D'Orsonnens premièrement au fort du Lac la Pluie, vers une ou deux heures de l'après midi. (\*7)

*RUDOLPH HALLER, a German, called, and not speaking French or English, Jasper Brewer, Esquire, was sworn to act as interpreter, after which the witness was sworn in the German language, and his examination conducted through the medium of Mr. Brewer by Mr. Vanfelson.*

*Haller.*—Je connois le prisonnier à la barre. J'étois au Fort William le dix-neuvième d'Octobre 1816. De Reinhard étoit là alors, et prisonnier sous la garde d'un sentinelle, et il continuoit de même pour dix ou onze jours. Je ne puis pas dire que c'étoit treize ou quatorze, mais je pense pendant dix ou onze, ou à-peu-près. Après cela il n'étoit plus enfermé, mais pouvoit sortir et entrer au fort comme il vouloit. J'ai quitté le fort le scizième ou dix-septième de Novembre de cette année là, et les gens de Milord étoient en possession du fort à ce tems, et pendant tout le tems que j'y étois. Par Milord, j'entends Milord Selkirk. Le parti étoit armé, et commandé par le capitaine Matthey, mais premièrement le capitaine D'Orsonnens l'avoit commandé. En explication je veux dire que le capitaine Matthey commandoit à mon arrivée le dix-

(\*7) The conversation of the Meurons of which I spoke, was amongst themselves, some spoke French, and some German, they gossiped together. De Reinhard was not bound. I was not lower down than Fort William. I saw captain D'Orsonnens first at the fort of Lake la Pluie, about one or two o'clock in the afternoon.

neuvième d'Octobre, et que les deux capitaines ont commandé au même tems, mais je penserois que le capitaine Matthey étoit plus haut que l'autre, et le capitaine Matthey a commandé jusqu'au tems que j'ai quitté.<sup>(\*\*)</sup>

*Attorney-General.*—We have no questions to put to Haller.

JEAN BEAUER, *Sworn.*

*And examined by Mr. Stuart.*

*Beauer.*—Je ne connois pas monsieur John M'Nab. J'ai été employé le quinzième de ce mois à lui signifier un ordre de subpœna à Montréal, de la part du prisonnier, mais je ne pouvois pas le trouver. Je suis connétable a Montréal. J'étois à son logis chez monsieur Williams, au post office de Montréal. On m'a dit qu'il étoit parti pour un dixaine ou douzaine de jours, mais qu'il avoit laissé son butin. J'étois ensuite à Longueuil, où'il se retiroit quelquefois, et j'ai été informé par le curé, qu'il ne l'avoit pas vu pour trois semaines. Je ne puis pas dire s'il est au service de Milord Selkirk

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(\*\*) I know the prisoner at the bar. I was at Fort William on the nineteenth of October, 1816. De Reinhard was then there, a prisoner under the guard of a sentinel, and he remained so for ten or eleven days. I can not say that it was thirteen or fourteen, but I think it was for ten or eleven days, or nearly that. After that he was no longer confined, but could go out and in the fort as he chose. I left the fort the sixteenth or seventeenth of November of that year, and the people of my Lord were in possession of the fort at the time, and during all the time that I was there. By my Lord, I mean my Lord Selkirk. The party was armed and commanded by captain Matthey, but at first captain D'Orsonnens had had the command. In explanation, I mean to say that captain Matthey commanded at my arrival on the nineteenth of October, and that the two captains commanded at the same time, but I should think that captain Matthey was above the other; and captain Matthey had the command until the time that I left.

ou non. Le seizième de ce mois, j'ai servi aussi un ordre sur un nommé Jean Baptiste St. Pierre, comme témoin, pour le prisonnier, et il m'a dit qu'il iroit. Il m'a dit aussi qu'il avoit reçu l'argent de Milord Selkirk, et qu'il étoit engagé pour partir au Fort William, mais qu'il iroit chez monsieur M'Kenzie pour lui parler. Nous étions en conséquence à l'office de monsieur M'Kenzie; il a conté ses affaires à monsieur M'Kenzie, et là dessus monsieur M'Kenzie lui a dit, qu'il feroit bien d'avertir son bourgeois qu'il avoit reçu un ordre pour partir pour Québec. St. Pierre a dit là dessus; "tu viendras avec moi," et en sortant de la porte nous avons rencontré un nommé Harnois.<sup>(\*)</sup>

*Attorney-General.*—I really must interrupt my learned friend. It is not the Crown who keeps the man away, and I can not see what the idle conversation of people in the street is to prove.

*Chief Justice Seivell.*—I do not know, Mr. Attorney-General. The prisoner thinks it essential

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(\*) I do not know Mr. John M'Nab. I was employed the fifteenth of this month to serve an order of subpoena upon him, at Montreal, on behalf of the prisoner, but I could not meet with him. I am a constable at Montreal. I went to his lodgings, at Mr. Williams, the post office at Montreal. They told me that he had gone away for ten or twelve days, but had left his things there. I was afterwards at Longueuil, where he sometimes went, and I was informed by the curate that he had not seen him for three weeks. I can not say whether he is in the service of my Lord Selkirk or not. The sixteenth of this month I likewise served an order upon a man named Jean Baptiste St. Pierre, as a witness for the prisoner, and he told me he would go. He told me also that he had received money from my Lord Selkirk, and that he was engaged to depart for Fort William, but that he would go to Mr. M'Kenzie, and speak to him. We were in consequence at Mr. M'Kenzie's office; he related his concerns to Mr. M'Kenzie, and thereupon Mr. M'Kenzie said to him, that he would do well to apprise his employer that he had received an order to set off for Quebec. Thereupon St. Pierre said, "go with me," and on going out of the door we met one Harnois.

to shew that, though he has subpœnaed witnesses, he can not bring them forward, and if he can shew why he can not, I think him at full liberty to do so.

*Examination resumed by Mr. Stuart.*

*Beauer.*—Sortant de l'office de monsieur M'Kenzie un nommé Harnois, un voyageur, a dit qu'il y avoit, en haut de la rue, un ami ou un camarade, "qui veut vous parler." Il a repondu qu'il ne pouvoit pas aller, qu'il partoît pour l'office de son bourgeois pour arranger ses affaires, et Harnois a dit que monsieur Forrest n'étoit pas là. Rendu un peu plus loin que le marché, nous avons rencontré monsieur Heurter. St. Pierre lui a dit qu'il avoit reçu un subpœna, et il demanda à le voir, et a pris l'ordre, sur ça je lui a dit qu'il n'avoit rien à faire avec, et il a remis l'ordre à St. Pierre, et ensuite nous avons été à l'office de monsieur Gale, qui est, à ce que je crois, du conseil de Milord Selkirk. (\*\*)

*St. Pierre was here called on his subpœna, but did not appear, upon which Mr. Stuart requested the default might be entered.*

*Mr. Gale addressing the Court, stated that as his name had been introduced in a manner that might cre-*

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(\*\*) On going out of Mr. M'Kenzie's office, one Harnois, a voyageur, said there was, at the top of the street, a friend or a comrade, "who wants to speak to you." He answered that he could not go, that he was going to his employer's office to settle his concerns, and Harnois told him that Mr Forrest was not there. Being got a little farther than the market, we met Mr. Heurter. St. Pierre told him that he had received a subpœna, and he asked to look at it, and took the order, upon which I told him that he had nothing to do with it, and he returned the order to St. Pierre, and we afterwards went to the office of Mr. Gale, who is, I believe, of counsel for my Lord Selkirk.

ate an unfavourable impression as to the non-appearance of St. Pierre, he was desirous of explaining his conduct to the Chief Justice and Court. The Chief Justice remarked that, though his name had been introduced in the course of the trial, yet it had never been mentioned but with the greatest respect, he was sure, in this Court, and that, if thought necessary, the Crown officers might call Mr. Gale, but he (the Chief Justice) did not suppose that they would. Mr. Gale rejoining that had his being called upon rested with himself, he should not have interposed the observations he had made, but as it rested with the Attorney-General, he had felt himself bound to protect his own conduct; should he not be called upon, he should, after his honour's observations, consider the omission to evince that it was unnecessary.

Mr. Stuart, then rose, and intimated to the Court, that the chain of evidence the prisoner's counsel had proposed to pursue, was here broken; that they were desirous of shewing a variation between the testimony given by certain witnesses at the proceedings in March on this subject, and those during the present trial. There being no more commissioners in Court, than required by the patent, he did not know what course the Court might approve, to enable him to attain this point, which he considered important. The Chief Justice enquired, (Mr. Stuart here hesitating,) whether it was the wish of the gentlemen to examine him, and being answered affirmatively, stated that the difficulty was: If I come down from this bench how am I to get up again, for it is as yet an unsettled point, whether a judge can retire from the bench, be examined, and resume his seat on the same trial. After some colloquial conversation between the bench and the bar, in the course of which his honour the Chief Justice, recognized as sound law, that if the interest of the prisoner was to be promoted by the examination of



himself, however inconvenient it might be, yet it was a paramount right which his counsel were entitled to insist on, but that in the present case, perhaps, no difficulty might present itself, as his learned brother, Mr. Justice Perrault, who sat on the trial in March, might be examined, as he was not on the bench on the present trial, which intimation being adopted by the prisoner's counsel, Mr. Justice Perrault was sent for, but not being found, it was agreed to proceed with other evidence, and to obtain the judge's attendance to-morrow.

WM. BACHELOR COLTMAN, Esq. Sworn.

And examined by Mr. Stuart.

Mr. Stuart.—Avez vous été l'année dernière dans les territoires Sauvages ?

Mr. Coltman.—Oui, l'année dernière j'étois dans les territoires Sauvages. J'étois au Fort William, et plus loin, en qualité de Commissaire de sa Majesté, pour m'informer des troubles dans ces pays là. Je suis arrivé au Fort William au douze de Juin, peut-être, que c'étoit vers le milieu du mois de Juin 1817, je crois; et j'ai trouvé ce fort alors en possession de la compagnie du Nord-Ouest. Rendu au Sault Ste. Marie, (avant de traverser le Lac Supérieur,) j'ai reçu une lettre de Milord Selkirk, datée à Fort William le vingt-huitième d'Avril 1817. <sup>(<sup>21</sup>)</sup>

<sup>(<sup>21</sup>)</sup> Mr. S.—Were you last year in the Indian territories ?

Mr. C.—Yes, last year I was in the Indian territories. I was at Fort William and farther, in the quality of His Majesty's Commissioner for enquiring into the troubles in those parts. I arrived at Fort William on the twelfth of June, perhaps it might be about the middle of the month of June, 1817, I believe; and I found that fort then in the possession of the North-West Company. When I got as far as Sault St. Mary, (before cross-

*Mr. Stuart.*—Have you, Sir, got that letter?

*Mr. Coltman* being some time in examining a large collection of papers which he had in Court.

*Mr. Justice Bowen.*—The Crown will perhaps admit that Lord Selkirk had possession of Fort William, as it may save time and is a fact that I think is pretty fully established.

*Mr. Stuart.*—Although we have unquestionably proved the taking of the fort by the Earl of Selkirk, we have not yet proved the length of time that he retained possession of it, which we are desirous of doing by Mr. Coltman.

*Chief Justice Sewell.*—What difference is that to make, what if he kept it for ever? the question is not at all varied whether the duration of the possession was for an hour or twenty years. In the very nature of things it was the same, whether temporary or eternal. I can not see a shade of advantage that is to be derived from proving the length of time possession was retained. The fact that it was in the occupation at one time of Lord Selkirk, and that to the knowledge of De Reinhard at the time he made his confession, you have proved, as well as that, previously to that period, it was occupied by the North-West company, and is at present in their possession. It then can not be essential to obtain more testimony on that point.

*Mr. Stuart.*—With the greatest deference I would beg to submit, why I consider it essential to put before the jury the length of time Fort William was in possession of Lord Selkirk. Let it, for a moment, be supposed that Lord Selkirk, as a magistrate, entered Fort William in search of,

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ing Lake Superior.) I received a letter from Lord Selkirk, dated at Fort William, the twenty-eighth of April, 1817.

or to arrest, imaginary culprits, that he got them, sent them, in conformity to the act under which the warrant issued and was executed, to Montreal, and had then gone away. There, every thing might have been justified, because it was the legal exercise and prosecution of legitimate authority. Let it, on the other hand, be supposed, (it is an imaginary case only that I am putting,) but let it be supposed that, from very different motives, not to take alleged culprits, not to execute a legal warrant, not to pursue a legitimate and authorised course, that of forwarding those whom he might arrest to a Court where they would receive protection or punishment, according as they merited, let it, I say, for a moment, be supposed that a magistrate could be found so lost to all sense of duty, so insensible to his own honour, so regardless of those laws which he was bound as a magistrate to enforce, and as a subject to obey, that, under pretence of executing a legal process, he should array a military force, lay siege to, and carry by assault, houses and stores, seize and appropriate to his own use their contents, arrest, and confine indiscriminately, the proprietors, their clerks, and their servants, tamper with them in their confinement, liberating such as came into his views, and confining more rigourously such as opposed them; I say, if such a magistrate could be found, would the legality of the instrument, from its having his seal and signature, be a justification for the outrageous course of procedure I have been imagining? surely not. What ground is there then, in the present instance, to say that the Earl of Selkirk as a magistrate made a legal entry, that in first issuing, and then in the mode he adopted to execute, his own warrant, he had no view but that of the upright and enlightened magistrate, that no private or interested sugges-

tion warped the impartial and disinterested justice of peace into a partial and interested rival; there is no ground whatever, for such a conclusion, the whole transaction proves the contrary, for, after entrapping the leading partners, and getting into the fort, he instantly changed characters, threw off the guise he had cloaked himself with, instead of culprits, it was property, he wanted, and having got possession of it, together with the fort, there he staid as suited his convenience, six, eight, or ten months. To say that this excess of violence and aggression was necessary, is contrary to common sense. To say that it was not such an aggravated abuse, if not prostitution, of the magisterial character as to merge the magistrate in the hostile rival, is, I think, impossible. The language, not only of common sense, but of the law also, (for I might multiply authorities without end,) is, that the moment authority is abused, authority ceases, and the magistrate, or officer, becomes only a private individual. I might instance the entry of a sheriff upon a writ of execution; if refused admission, the entry although forcible, is a legal entry, and he might proceed to levy, according to sound judgement, sufficient to cover the amount specified in his writ, but if, instead of demanding admission by virtue of the authority of his writ, he proceeded to break into the premises, or if, having obtained entry, instead of levying to cover the hundred pounds specified in the process, he should wantonly or malevolently seize property to the amount of thousands, is his office of sheriff or writ of execution to protect the abuse? no. Then I contend that it is essential for me to prove the subsequent conduct of the Earl of Selkirk, because I contend that the moment he exceeded the necessary power to secure obedience to the law, that he changed from the magistrate to the

private individual, on this sound and general principle, that authority abused, ceases to be authority. It is unnecessary to enlarge on this point, as we daily see or hear of civil actions to recover damages in cases of abuse, or excess, in the execution of processes in themselves legal. In advertising to the Earl of Selkirk, it is not to influence the jury as to these disputes, nor is it to address the passions on the conduct of the noble Earl, and the other great commercial company; I should be unworthy of the gown I have the honour to wear, did I attempt it, but I can not do justice to the prisoner, except I prove that the Earl of Selkirk, by his subsequent conduct, lost his character of a magistrate. This I intend to do by shewing, that at the date of the letter I have asked for, his Lordship remained in possession of Fort William, and must necessarily, from that circumstance, have acted as a private individual, and De Reinhard being therefore in a state of illegal duress, his confession is good for nothing.

*Mr. Vanfelson having briefly gone over the same argument in French.*

*Chief Justice Sewell.*—Let us see how the question comes before us, and our decision will be evident to every man of common sense, to the commonest of the common, as it strikes me. The unfortunate individual at the bar is accused of the crime of murder, and it is yet in suspense between him and the Crown, whether he is guilty or not guilty. He is now on his trial before his country, and we are bound to receive every thing offered in evidence for him, and every thing offered in evidence against him, as far as consistent with sound legal rules. These can not be broken in upon to accommodate either party. How then stands the case at this very moment. I have

made, (says the prisoner,) it is true, a series of confessions, but I will shew such an influence on my mind at the time of making them, (arising from the hope of benefit, or any thing you choose,) that they ought to be destroyed. Prove then the circumstances producing this influence; this you do not attempt. Again, supposing the confession signed the 28th October, and delivered in November, had been delivered to a gentlemen acting as a magistrate and received as such, what can occurrences taking place in the succeeding April by possibility have to do with it? certainly nothing. By no possibility can they affect or alter the act finished on the 3d of the previous November. You contend that we ought to receive it, because the confession was taken by a magistrate, we decided that we could not but receive the confession, but not as a confession under the statute of Philip and Mary, and we traced authorities to shew you that we could not refuse to receive it as a confession at common law, and we received it as a paper delivered by the prisoner to the Earl of Selkirk as an individual, and not in his capacity of a magistrate. What then had it been delivered to any body else, or had it been a *viva voce* confession before any other person, we should have received it, as we did his previous verbal confessions to captain D'Orsonnens, Vitchie, and others. Under this view, which my learned brother as well as myself takes of the subject, I am decidedly of opinion your question can not be received.

*Mr. Justice Bowen.*—I can not see, for a moment, how we can entertain this question. We are not now enquiring whether a civil action would lie, not enquiring whether Lord Selkirk entered the fort as a magistrate, or if so, whether he kept it too long, and thereby lost his magisterial character, we have not taken this confession as a con-

fession taken before a magistrate. It is taken as a narrative made by the prisoner himself, the latter end of October, or beginning of November, of events that had previously transpired, and of the share which he had taken in them. What effect can what passed in the month of April, 1817, have on what was done in October or November, 1816? could the transaction of the former period be at all changed by what took place at the latter? it is certainly contrary to common sense to suppose it could. The question must certainly be rejected.

*Mr. Stuart.*—I would request your honours to insert my question together with your honour's decision thereon upon your honour's notes, that we may be able hereafter to refer to them, should we see occasion, as I think probably we shall.

*Chief Justice Sewell.*—You wish to go into an examination of what took place in April. You ask us to admit evidence of the 3d April, 1817, to a fact which transpired on the 3d November, 1816; *primâ facie* the thing is impossible. Next, you object that Lord Selkirk was not acting as a magistrate, that we have decided is no matter, for that we have not admitted the confession under the statute of Philip and Mary, but at common law; so much you may certainly have down if you think proper.

*Mr. Justice Bowen.*—We have taken it thus. Mr. Stuart, for the prisoner, being called upon to state what he meant to prove by this letter; answered, "I mean to prove that his Lordship retained possession of Fort William up to that time, and 2d. that he (Lord Selkirk,) did not act as a magistrate in receiving the confession of De Reinhard."

*Mr. Stuart.*—I beg the Court's pardon, but I believe I am not so fortunate as to be clearly understood. I intended to prove by the witness

the possession of the fort by Lord Selkirk; that I consider a question of fact, the other is a conclusion of law arising from the argument I have had the honour of submitting, and I take these to be points widely differing from each other.

*Chief Justice Sewell.*—I will read to you the opinion of the Court upon your proposition, as we now understand it. Your question to Mr. Coltman, was, “have you got the letter?” upon Mr. Stuart being called upon, he stated to the Court, that he wished by this question to prove two points: 1st. that Lord Selkirk had remained in possession of Fort William until the month of April, 1817, and from thence to infer that he did not act as a magistrate when he received the prisoner’s confession, and therefore that it is not entitled to credit, the prisoner being in duress. The Court decided that the letter can not be read for either of these purposes; 1st. because Lord Selkirk’s possession on the 28th April, 1817, could not, by any possibility, have influenced the declaration of the prisoner De Reinhard, made on the 3d November preceding, and 2d. that the Court have rejected the examination said to have been taken by the Earl of Selkirk as a magistrate, because it was not proved either by Lord Selkirk or his clerk, and received the paper written by De Reinhard, and then delivered by him to Lord Selkirk, not at all as an examination under the statute of Philip and Mary before a magistrate, but as a piece of evidence by confession at common law.

*Mr. Stuart.*—I did not call Mr. Coltman to prove that Lord Selkirk acted as an individual, and not as a magistrate. De Reinhard has made a confession to Lord Selkirk in November, at Fort William, he (Lord Selkirk) at that time being in possession of Fort William; that was already in evidence. I then wished to have proved that in



April, 1817, Lord Selkirk still retained the possession, and to do it I purposed to have produced a letter from his Lordship, from which I proposed to derive certain legal inferences. I should be extremely concerned if the Court thought I would attempt such an irregularity as to question Mr. Coltman upon the capacity in which the noble Earl acted.

*Mr. Justice Bowen.*—Your wish of having an entry upon our notes of your question, and the decision of the Court thereon, is, I believe, complied with. I have made this minute of it. Mr. Stuart, for the prisoner, being called upon to state what he meant to prove by this letter, answered, “I mean to prove that his Lordship retained possession of Fort William up to that period, and from thence to infer that he did not act as a magistrate, but as a private individual, when he received the pretended confession of the prisoner, and that it was not entitled to credit, the prisoner being in duress.” This the Court overruled, because it is immaterial, upon the present issue; whether his Lordship retained possession of the fort for six months, or six hours, and because the Court did not admit yesterday the examination of the prisoner said to have been taken before his Lordship as a magistrate, it not being proven, but admitted the written declaration of the prisoner, signed on the 28th October, and afterwards delivered to his Lordship, in the presence of the witness Dr. Allan.

*Mr. Stuart.*—My object was to shew, from this letter, a fact, and thence to infer, as a legal deduction, that the pretended confession could not have been taken by the noble Earl, as a magistrate, because he had divested himself, by his conduct, of the qualities of a magistrate. Also, that if received by the Court as a confession made to the Earl

of Selkirk as a private individual, it is not entitled to credit, because it was written and taken at a time that the prisoner was in a state of illegal duress. I wish the Court to notice that my objection is twofold. That it can not be received as a confession, or examination, before a magistrate, which, on its face, it purports, and that it ought not to be admitted as a declaration made to Lord Selkirk in any other capacity, because at the time of declaring, he was in a state of illegal duress; in brief, my argument is, that as it can not be received as a confession, under the statute, so neither ought it to be admitted at common law, or if it is admitted, that it is entitled to no credit.

*Chief Justice Sewell.*—I will add to the reasons of the Court these words, and then I believe I shall have stated explicitly our decision, and also meet your ideas; after the words, “as a piece of evidence at common law,” I will annex, “as a paper of the prisoner’s own composition and writing, delivered to his Lordship by him, and the capacity in which his Lordship received it at common law, being therefore immaterial.”

*Examination resumed by Mr. Stuart.*

*Mr. Colman.*—J’ai parti de Québec l’année dernière, et dans ma route à la Rivière Rouge, j’ai passé par Drummond’s Island dans le Lac Huron, et c’est là que j’ai vu le prisonnier à la barre, la première fois. C’étoit le trentième de Mai ou le premier jour de Juin 1817, à ce que je crois. Quand j’ai vu De Reinhard la première fois, il me paroissoit libre. Il n’étoit pas renfermé, mais il étoit là avec un nommé Murphy, qui, j’entendois, étoit un connétable, et je crois qu’il étoit sous sa surveillance. J’ai adressé, conjointement avec monsieur Fletcher, un warrant à ce Murphy, pour

conduire De Reinhard à Montréal, et le commettre à la prison, et le warrant commandoit au geolier de le recevoir. Je connois Jean Baptiste Desmarais et je l'ai vu là.<sup>(92)</sup>

*Chief Justice Sewell.*—Were you not, Sir, together with Mr. Fletcher, the only magistrates of the Indian territory at that time?

*Mr. Colman.*—I could not exactly answer that question without reference to acts and commissions, but I think we were. It was a matter of public belief that after Sir John Sherbrooke's proclamation there were no other.

*Examination resumed by Mr. Stuart.*

*Mr. Stuart.*—Où avez vous vu Desmarais?

*Mr. Colman.*—Je l'ai vu ensuite au Lac la Pluie. Il étoit amené devant moi par un nommé Michael M'Donell, à ce que je crois, comme un homme au service de Milord Selkirk, et dont il seroit à propos de prendre quelque témoignage. C'étoit vers le vingt-cinquième de Juin, je pense, mais si la Cour me permettroit d'examiner mes papiers, je puis dire exactement. C'étoit le vingt-cinquième de Juin, par sa déposition que j'ai ici. Je connois un Sauvage de la Rivière Rouge, communément appelé "Fils de la Perdrix Blanche." Je l'ai vu

(92) I left Quebec last year, and on my route to Red River, I passed Drummond's Island in Lake Huron, and it was there that I saw the prisoner at the bar for the first time. It was the thirtieth of May, or the first day of June, 1817, as I believe. When I saw De Reinhard the first time he appeared to me to be at liberty. He was not confined, but he was there with one Murphy, who, I understood, was a constable, and I believe that he was under his surveillance. I addressed, conjointly with Mr. Fletcher, a warrant to that Murphy, to convey De Reinhard to Montreal, and to commit him to prison, and the warrant commanded the gaoler to receive him. I know Jean Baptiste Desmarais, and I saw him there.

plusieurs fois dans cette province, et pour la dernière fois, je l'ai vu, vers la fin du mois du Février, dans le district de Montréal. Il ne pouvoit pas parler François, à ce que j'ai compris. Je pense qu'il connoissoit un peu de mots, qu'il debitoit peut-être quelques mots. Je connois un nommé M'Nab, et je l'ai vu écrire.

*Mr. Stuart.*—Regardez, cette lettre, et ayez la bonté de nous dire si c'est l'écriture de John M'Nab? <sup>(11)</sup>

*Solicitor General.*—I should like just to look at this letter, (*having examined it,*) it purports to be a letter from a Mr. John M'Nab to a captain Matthey. What can that have to do with the case? I submit to your honours that it is totally irrelevant, and ought not to be entertained.

*Chief Justice Sewell.*—You are rather premature. When Mr. Stuart proposes to make it evidence will be the moment to consider whether it is relevant or irrelevant.

*Examination resumed by Mr. Stuart.*

*Mr. Stuart.*—Is this letter, Sir, according to your judgment, the hand-writing of Mr. John M'Nab?

<sup>(12)</sup> *Mr. S.*—Where did you see Desmarais?

*Mr. C.*—I saw him afterwards at Lake la Pluie. He was brought before me by one Michael M'Donnell, I believe, as a man in the service of my Lord Selkirk, from whom it would be right to receive some evidence. It was, I think, about the twentyfifth of June, but if the Court will permit me to examine my papers, I can tell exactly. It was the twentyfifth of June by his deposition, which I have got here. I know an Indian, from Red River, commonly called Fils de la Perdrix Blanche. I have seen him several times in this province, and the last time I saw him, it was about the end of the month of February in the district of Montréal. He could not speak French, as I understood. I think he knew a few words, that he could pronounce, perhaps, some words. I know one named M'Nab, and I have seen him write.

*Mr. S.*—Look at this letter and have the goodness to say whether it is the writing of John M'Nab.

*Mr. Coltman.*—I have no doubt but it is his writing. I have seen this letter before at Fort William. From the state it is in now, it is evident that it has been destroyed, and then pasted together. Je n'ai aucun doute que c'est l'écriture de Jean M'Nab.<sup>(\*)</sup>

*Mr. Stuart.*—I now move that the letter be read, on the ground that, in the absence of the best or primary, I have a right to resort to secondary evidence, and by it I mean to prove that promises were made to De Reinhard by the Earl of Selkirk, and captain Matthey.

*Attorney-General.*—I object to its being read, and shall in a few words state to the Court why I do so. The object of my learned friends is to destroy this confession, and how do they now propose to do it? in a manner that can not, for a moment, be tenable. They propose to produce the letter of a third person. If they can disprove, or if they can remove, its credibility, from any circumstances under which it was taken, let them produce Mr. M'Nab. If this mode were to be admitted, it would open the door to the destruction of every confession, no matter how taken.

*Chief Justice Sewell.*—I observe that there is no date to the letter. I do not see therefore what is to be made of it.

*Attorney-General.*—It will not, I think, be necessary to notice that circumstance, as I contend that there can be no way of proving M'Nab's knowledge of any circumstance, but by producing him.

*Chief Justice Sewell.*—It is now half past six o'clock. The Court will therefore adjourn till eight o'clock to-morrow morning, when we will

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(\*) I have no doubt but that it is the hand-writing of John M'Nab.

hear you in support of your objections. *Court adjourned till that time.*

*Thursday, 28th May, 1818.*

PRESENT AS BEFORE.

*The Jury were called over and being all present.*

*Attorney-General.*—If your honours please, a piece of evidence is offered by my learned friends engaged on the defence, to which I object. It is a letter purporting to be from a Mr. John M'Nab, and though from its contents, it is very immaterial whether it be read or not, I feel it my duty to object to it, because it is irregular. It is not the best evidence which, from the nature of the subject, might be produced. Another objection is that it is not a testimony upon oath, not a deposition of M'Nab's, such as, if my learned friends proved that the deponent was beyond the jurisdiction of this Court, they would be entitled to have let in. Nevertheless my learned friends, in the absence of M'Nab, (though they do not shew that he might not have been present if they had looked after him,) resort in this letter to what they call secondary testimony. That it is totally inadmissible is evident in a moment, for, admit letters as evidence, it would put it into the power of any two persons to destroy any confession. As to this letter it never came into the prisoner's hands, how therefore could his conduct be affected by it? I will not trespass further on the time of the Court. I contend it can not be admitted on the general rule that the best evidence must be produced, which in this case is M'Nab, and also that it is a document not made on oath, I might add, and never was in possession of the prisoner.

*Solicitor General.*—It really is hardly necessary that I should occupy the attention of the Court on a point I consider so very clear. The evidence tendered by my learned friends is, I contend, contrary to every principle, though they endeavour to establish its admissibility on the ground that they may resort to secondary evidence in the absence of the primary; undoubtedly they may, when they have proved a legal impossibility to produce the primary. Have my learned friends subpoenaed M'Nab? if they have, and he has not appeared, where is their writ of attachment against him? if even they had used their utmost endeavours, by taking these indispensable preliminary steps to the introduction of secondary testimony, and after all could not have found him, it would be a misfortune for the prisoner, but could form no ground for taking as evidence a document not supported by oath. Suppose there should be occasion to indite M'Nab for perjury, how can it possibly be done upon a document not substantiated by oath? letters directed to a defendant, and never having reached him, have never been received as evidence. It is unnecessary to remark that letters pretended to be written to a defendant might be made to affect him both ways. According to the views of the writer, they might be made to prejudice his case, or to benefit him, though I do not see that this letter can do either. This case, however, is much stronger, for it is not a letter to the defendant, but to a third person, and which, I believe, it is not pretended the prisoner ever saw. On the whole I really consider I should be trifling with the time of the Court, were I to argue further on this business.

*Mr. Stuart.*—I have the honour to submit that the evidence I tender is clearly admissible. This is not a letter fabricated a week or ten days ago,

to give a colouring to our defence. It was made in the country where the pretended confession took place, and being found long ago, mutilated and torn, in the very neighbourhood of Fort William, was put into the commissioner's hands. A letter of this tenor, being so found, might of itself furnish strong grounds of suspicion, and be at the same time powerful evidence of its genuine character. We have indeed proved the hand-writing by the honourable commissioner now under examination. Much to our astonishment, the Earl of Selkirk is not here to give his testimony. We, knowing of this pretended confession, did not subpoena Lord Selkirk, not doubting but he would be brought here on the part of the Crown. This confession was a matter of such public notoriety, from its having been printed and circulated with the greatest avidity, that we never questioned but his Lordship would himself have felt it his duty to attend though not served with a subpoena. In the absence then of the noble Earl, from whom, were he in the box, we might draw the most important information relative to this confession, I should, with confidence, submit we might, consistently with the rules of evidence, introduce this letter. From whom is this letter and to whom is it addressed? it is a letter from M'Nab, (whom we could not get here,) in the service of Lord Selkirk to captain Matthey, also in the service of Lord Selkirk, relative to De Reinhard. I should contend, as a positive fact, (to go no farther,) which the jury can draw what inferences they please from, that we have to prove that at about the time this pretended confession was made, a letter was written from M'Nab in the service of Lord Selkirk, to captain Matthey, who was also so situated, with the exception that he was in command, and therefore more important to us to prove. This



letter, (which we produce,) will shew that measures were resorted to to obtain a confession. It will then be for the jury to say whether this pretended confession is that free, that voluntary, declaration which it has been represented to be, whether the circumstances we have proved do not contradict such a supposition, and therefore destroy its credibility, corroborated as they will be by this letter.

*Mr. Vallière de St. Réal, in a very few words submitted to the Court, that, although it might not be that strict evidence which would be required against a prisoner, yet as it was a part of a circumstance favourable to the prisoner, the Court would not refuse it, as the constant practice of criminal Courts was to relax the strict rules of law in favour of the accused, if necessary to let in testimony on his behalf.*

*Chief Justice Sewell.*—The Court are under the absolute necessity of refusing to receive this letter, inasmuch as it is not possible to bring it within any rule for the admission of testimony. The argument for receiving it, is completely broken down by the circumstances which belong to the letter. Here is a letter from a Mr. M'Nab, to a captain Matthey, (who, for ought shewn to the contrary, might either, or both, have been produced,) of one of whom we have not heard till the present moment, and of the other only incidentally during the trial. Is it then to be said that merely because Mr. M'Nab is not produced, (I do not mean to say that it is any body's fault that he is not,) or that because he is not able to be produced, that therefore we could receive any thing he said or wrote merely because he could not be so produced? most assuredly it will not, unless it was something that had passed upon oath, whether it related to writing or utterance. It has been sug-

gested that admission might be given to this testimony, under the rule that where the primary evidence could not be produced, that then secondary might be resorted to. There are cases undoubtedly of that nature, as where the magistrate is not able to travel, and had no clerk at the time of taking a deposition, or in the case of a coroner, then the affirmation that the best evidence cannot by possibility be exhibited, opens the door to the reception of secondary, but the incapability of producing the best must be first proved. This is the general rule, not only as to written testimony given under oath, but also in *viva voce* evidence. It is also urged that, as Lord Selkirk is not here, therefore it ought to be admitted, but the question immediately presents itself, "why is he not here?" have any measures been taken to secure his attendance? it is not enough to say that you expected, from the nature of the case, he would have been here. If he was an important witness for the defence, it was certainly the duty of those entrusted with it to have taken the requisite steps to secure his attendance. Having failed to do so, you can not certainly be permitted to plead your own omission, or to avail yourself of your own laches, as they are termed in law; nor is it competent to you to say that you relied upon his being produced by the Crown; if you wanted the Earl of Selkirk as a witness, it was undoubtedly your business to provide for his appearance by using those means which the Court have the power of furnishing you.

*Attorney-General.*—We have subpoenaed the Earl of Selkirk, but his health prevents his attendance as a witness.

*Chief Justice Sewell.*—That does not signify. If De Reinhard wanted the Earl of Selkirk as a witness, he should have summoned him; he is with-

in the jurisdiction of this Court, and his attendance might have been secured, or his absence accounted for in a satisfactory manner, so as perhaps to admit testimony, (which can not now be received,) to prove that promises were made by him, according to what you allege. Another ground upon which it is incompetent to you to ask to introduce the letter is, that supposing you to have been under an expectation that the Crown would bring forward the Earl of Selkirk as a witness up to the first day of the trial, you could not have imagined so since. The circumstance of the witnesses being called over on the opening of this case on the 22d, gave the prisoner and his counsel sufficient notice that neither the Earl of Selkirk, nor captain Matthey, were witnesses on the part of the Crown; why not then remedy the oversight, it is now a week since this trial commenced, and there has been sufficient time to have compelled the attendance of both the Earl of Selkirk and captain Matthey; you can not come into Court, and expect to avail yourself, not of ordinary, but of extraordinary, laches. A third reason therefore for the Court refusing your application, is that as the witnesses were called over on the 22d inst. the prisoner as well as his counsel, knew, or might have known, that the Earl of Selkirk and captain Matthey were not called by the Crown, and consequently they might have then have subpoenaed them, if not before. Another reason that this letter can not be made evidence is, what can occurrences in May, 1817, have to do with what took place in November, 1816? if it is alleged that the letter has no date, for what reason are we to suppose that it was written before, any more than after, the confession. I do not imagine that there exists any absolute necessity for it; indeed the very face of the letter warrants a contrary conclusion.

What can that part of it refer to which speaks of the promise of De Reinhard, if it does not refer to the confession? Does not this very uncertainty shew the necessity of better evidence being produced, for, if we are to presume, we may presume unfavourably as well as favourably, for if we evade the rule all is hazard and uncertainty. For these reasons I am compelled to say it can not be received as evidence, however unpleasant it is to do so, and it is not only unpleasant but very much so, to decide against, or exclude, any thing which the prisoner, or his legal advisers, in their judgments consider essential or serviceable to the defence, but in the performance of our duty, we can not help it, and called upon as we are, to decide, I am bound to say it is totally inadmissible.

*Mr. Justice Bowen.*—I am perfectly of the same opinion, but for many reasons I hope it will be admitted to be read after the case is closed, so that nothing which the prisoner or his counsel may have thought important, may have been kept from the jury, though to me it does not appear that it can make either for or against either the one party or the other. But, as we are called upon to legally decide the question, we can not but refuse to receive the letter, and for this obvious reason that the letters of third persons, never having come to the possession of the prisoner can not be evidence. A prisoner loses nothing by this, for if letters of third persons were to be admitted as evidence *for*, they must also be admitted *against*, him. That no benefit could accrue from the admission of letters of third persons will be evident in a moment. Suppose such a letter to state correctly the circumstances, and to prove the innocence of the accused, then it would be in the power of any fourth person to accuse by letter, and although the prisoner had nothing to do with it at

all, it might be made evidence against him, and thus reverse the whole preceding favourable testimony. The very same question occurred in the case of Colin Robertson recently tried at Montreal. It was wished, on the defence, to produce a letter from Cuthbert Grant, shewing from that letter that they had reason to apprehend that the Bois Brulés would come down upon them; but its admission was refused on this very ground, that letters of third persons could neither be evidence for, nor against, a prisoner. It is stated that its having been torn is a suspicious circumstance, because it manifested a wish to conceal its contents. This is mere presumption, and if we are to presume, we may presume all round, and see how it will work. May it not be presumed, on the other hand, that there could not be that great anxiety about it, or the more effectual way of destroying it would have been resorted to; it might have been burned. It was torn and scattered to the winds, where it might be, and indeed has been collected, whereas if it was what it was wished should not be known by another, why not destroy it effectually? why not burn it? the letter is without a date, it is true, but there is a part of its contents which indicates about what time it must have been written; the breaking of the ice of the river alluded to in the letter, plainly shews it could not have been written in November, but must have been penned about the time the indorsement specifies. It is however perfectly unnecessary to comment farther upon the subject, after the very clear exposition of my learned brother. Called upon as I am to decide upon the admissibility of the letter, I must decide legally, though contrary to my wishes, for I wish it might be read for the reason I have before assigned, but sitting here to admit only legal evidence, I can not consent to

admit that which is so palpably opposed to every principle of law, yet I wish it might be read, lest such an omission might be supposed to be a shutting out from the jury of a material circumstance in the prisoner's favour, and I wish that not only this letter, but the other also should be read, if the Crown officers do not think such a step inconsistent with their duty. I beg to remark to the Attorney and Solicitor General, that I, by no means, wish my remarks to be considered as directing them what course to pursue, but a mere expression of a private wish, for which I assign my reason.

*Attorney-General.*—I have no objection to their being read. I consent to both letters being read.

*Chief Justice Sewell.*—Let it be entered thus: read by consent of his Majesty's Crown officers.

*Read a letter from Mr. John M'Nab to captain Frederick Matthey, (Appendix E.)*

*Chief Justice Sewell.*—Do you wish to have the letter of the Earl of Selkirk read?

*Mr. Stuart.*—I do not know yet. I can not speak of a document that I have not seen. When I see it, I shall be able to determine whether I wish it read or not.

*Mr. Justice Bowen.*—I thought you called for it yesterday, and that the argument which we had, was because the Crown objected to its production.

*Mr. Stuart.*—I very distinctly stated that my object was to prove that at a certain time Lord Selkirk remained in possession of Fort William, and in endeavouring to attain that object, I enquired of Mr. Coltman if he, in conjunction with his brother commissioner, had received a letter from the Earl of Selkirk. If I saw the letter, and it proved that circumstance, I should certainly wish it to be read, but I can not state, till I see the letter, whether I am desirous to have it read or not.

*Chief Justice Sewell.*—Upon that subject you must exercise your own discretion; and Mr. Coltman his own pleasure. We know nothing of Mr. Coltman's letters. If he likes to let you see them, we can have no objection, and if the Crown officers consent to their being read, we shall present no obstacle, but we have no controul over Mr. Coltman's letters, nor do we wish to have any.

*Mr. Stuart.*—I will put the direct question, when did Lord Selkirk leave Fort William?

*Mr. Coltman.*—I was not there when he went away; I heard that Lord Selkirk——

*Solicitor General.*—I beg your pardon, Mr. Coltman, but you must not tell us what you heard, as it is not evidence, only what you yourself know from your own personal observation, is suitable testimony.

*Examination of Mr. Coltman resumed by Mr. Stuart.*

*Mr. Coltman.*—J'ai été dans les territoires Sauvages jusqu'à la Rivière Rouge. Toute la Rivière Winnipic est à ce côté du Lac Winnipic, c'est-à-dire, entre le Golfe de St. Laurent, et le Lac Winnipic; étant, en effet, entre le Lac Winnipic et le Lac Supérieur.<sup>(\*)</sup>

*Chief Justice Sewell.*—Surely, at this hour of the trial, there is no geographical difficulty about being started.

*Mr. Stuart.*—No, your honour: it is only a formal piece of evidence, which we wish to put on record. The River Winnipic is, is it not, between the Gulph of St. Lawrence and the Lake Winni-

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<sup>(\*)</sup> I have been in the Indian territories as far as Red River. The whole of the River Winnipic is on this side of Lake Winnipic, that is to say, between the gulph of St. Lawrence and Lake Winnipic, being, in fact, between Lake Winnipic and Lake Superior.

pic? those form the two extreme points of the line, do they not, between which the River Winnipeg lies?

*Mr. Colman.*—Certainly, it is between the Gulph of St. Lawrence and Lake Winnipeg.

*Mr. Justice Bowen.*—I should be sorry to say that it lay exactly between those points, as that must depend on which way the river runs.

*Cross-examination conducted by the Attorney-General.*

*Attorney-General.*—As you, Sir, in your quality of Commissioner had to examine a great number of persons, you had an opportunity of knowing the circumstances of that country and the events that passed there.

*Chief Justice Sewell.*—What now, Mr. Attorney-General, you are not, I hope, going to attempt an investigation of the state of the country, from the unhappy differences between these companies?

*Attorney-General.*—In the defence, a state of warfare has been set up as a reason for doing away the confessions; I wish to prove that what my learned friends have called a warfare, was nothing more than the interposition of the force necessary to secure the execution of a legal process.

*Chief Justice Sewell.*—Do not, Mr. Attorney-General, I beg of you, endeavour to lead us into that wide field, after we have decided that, excepting the fact of Fort William having been taken possession of by the Earl of Selkirk, to the knowledge of De Reinhart at the time of confessing to captain D'Orsonnens, the state of the country is too remotely connected with the circumstances of the case to be evidence upon this trial.

*Attorney-General.*—Do you know captain D'Orsonnens? did you meet him in the Indian territory?



*Mr. Colman.*—Je connois le capitaine D'Orsonnens. Je l'ai rencontré dans le territoire Sauvage.<sup>(18)</sup>

*Attorney-General.*—As a magistrate in that territory, you would have an opportunity of knowing generally the characters of the persons who were there?

*Mr. Stuart.*—I trust the Attorney-General will not compel me to object to this line of conduct, especially after the remark just made by the Court.

*Attorney-General.*—I am going, after that question is answered, to interrogate Mr. Colman relative to captain D'Orsonnens generally, and surely I am entitled to do that after his testimony and conduct has been endeavoured to be so impeached. I may support captain D'Orsonnens' credibility on a general point of view after it has been attacked.

*Mr. Stuart.*—Our evidence affecting the credibility of captain D'Orsonnens went to specific facts, not to general character. If the Attorney-General wishes to rebut that evidence, he certainly can do so, but he can not go into an examination in support of general character, for it has not been examined into by us, and it is therefore contrary to first principles to allow it.

*Attorney-General.*—If not permitted to go into general, I do not see how I am to rebut specific facts.

*Chief Justice Sewell.*—We have wandered so far in this trial, that we have frequently forgot the first principles of law. If it were doubted for a moment, the very first book upon evidence I should lay my hand upon, would demonstrate the correctness of the assertion, but it is unnecessary to

<sup>(18)</sup> I know captain D'Orsonnens. I did meet him in the Indian territory.

refer to authorities as to the various ways of impeaching the credibility of a witness, on the one hand, or of supporting his testimony on the other. All that is necessary to support the testimony given by captain D'Orsonnens may certainly be obtained from Mr. Coltman, without overstepping the rules laid down for our guidance on the subject.

*Cross-examination resumed by the Attorney-General.*

*Attorney-General.*—Avez vous la deposition du capitaine D'Orsonnens parmi vos papiers ?

*Mr. Coltman.*—J'ai telle variété des papiers que je ne puis pas dire au moment, mais je sais que j'ai pris sa deposition, et j'ai pris d'autres dépositions d'autres personnes dans le territoire Sauvage. Il y en a, à ce que je crois, parmi le nombre, des déclarations à serment de certains faits qui contredisent les déclarations du capitaine D'Orsonnens faites aussi sous serment, mais ce n'est pas à moi de dire lequel est vrai. Je ne suis pas en droit de juger les quels ont déposé la verité, mais je n'ai, sans doute, aucune raison personnelle de douter de la credibilité du capitaine D'Orsonnens. C'est à cause du nombre des déclarations que j'ai pris, que je dis que, suivant mon esprit, les déclarations du capitaine D'Orsonnens et d'autres personnes sont contradictoires, mais je ne puis pas dire lesquelles sont vraies. (°7)

(°7) *Attorney-General.*—Have you got captain D'Orsonnens' deposition amongst your papers ?

*Mr. Coltman.*—I have such a variety of papers that I can not say at the moment whether I have, but I know that I took his deposition, and I took other depositions from other persons in the Indian territory. There are amongst them, I believe, declarations upon oath to certain facts, which contradict the declarations of captain D'Orsonnens, made also upon oath, but it is not for me to say which is true. I have no right to judge which of them deposed the truth, but I have, without doubt, no personal

*Attorney-General.*—I will put a general question to Mr. Coltman. Do you consider captain D'Orsonnens entitled to credit in a Court of Justice upon his oath?

*Mr. Coltman.*—Undoubtedly; assuredly I would. From what I have seen of captain D'Orsonnens, I think he acted in the Indian territory under a strong party spirit, and some prejudice, but I have no reason to doubt his honour, or the propriety of his conduct in doing what he conceived to be so.

*Attorney-General.*—Have the goodness, Sir, to give your answer in French to the jury.

*Mr. Coltman.*—Assurement, je crois que le capitaine D'Orsonnens est digne de foi sur son serment dans un Cour de Justice. Le capitaine D'Orsonnens a agi, dans les territoires Sauvages, à ce que je pense, avec un esprit de parti, et de préjugé, mais, en mon estime, toujours avec honneur et propriété, suivant qu'il l'entendoit.(")

*Attorney-General.*—I have done with Mr. Coltman.

*Mr. Coltman.*—I beg the Court, if not irregular, to allow my evidence to be read over to me; (*which was accordingly done.*) *Mr. Coltman, addressing the Court, said.* There is one word in your honours notes which I would wish to change. I do not intend to say that De Reinhard was "libre."(") I would rather say, "Il étoit ordi-

reason to doubt captain D'Orsonnens' credibility. It is because of the number of declarations I took that I say that, according to my judgment, the declarations of captain D'Orsonnens and those of other persons are contradictory, but I can not say which of them are true.

(") Assuredly, I believe that captain D'Orsonnens is worthy of credit upon his oath in a Court of Justice. Captain D'Orsonnens, acted in the Indian territory, as I think, with a spirit of party, and with prejudice, but, according to my judgment, always with honour and propriety, as it appeared to him.

(") At liberty.

nairement avec un nommé Murphy. Je crois l'avoir vu seul, mais ordinairement il étoit sous la surveillance de Murphy, qui paroissoit le traiter avec confiance comme s'il ne craignoit pas qu'il s'échappât.<sup>(100)</sup>

*Attorney-General.*—Was not Murphy a constable?

*Mr. Coltman.*—I believe we swore him in a constable. I am nearly confident we did before sending him to Montreal with De Reinhart.

*Attorney-General.*—Is it necessary to guard a prisoner in bringing him through the Indian territory, in the same manner as in a civilized place?

*Mr. Coltman.*—En traversant les pays Sauvages, il n'est pas nécessaire de veiller un prisonnier comme ailleurs. Il n'y a pas occasion pour les mêmes précautions parcequ'il n'y a pas de danger qu'un prisonnier s'évade, car s'il s'échapperoit, il périroit nécessairement de faim dans les bois, sur tout un étranger; mais, arrivé à Drummond's Island, où les moyens de s'échapper sont faciles, il est nécessaire de se servir de plus de précaution. <sup>(1)</sup>

*Re-examined by Mr. Stuart.*

*Mr. Stuart.*—What distance is it from Drum-

<sup>(100)</sup> He was usually with one Murphy. I believe that I saw him by himself, but generally he was under the surveillance of Murphy, who seemed to treat him with confidence, as if he was not afraid that he would escape.

<sup>(1)</sup> It is not necessary to guard a prisoner so much in passing through the Indian country, as in other parts. There is no occasion for the same precautions, because there is no danger of a prisoner's absconding, for, if he were to escape, he must of necessity perish from hunger in the woods, especially a stranger; but, when arrived at Drummond's Island, where the means of escape are easy, it is necessary to make use of more precaution.

mond's Island to the American shore? I mean the United States of America.

*Mr. Colman.*—It is about fifteen leagues, as I imagine, from Drummond's Island to Michilimackinac. I have no certainty as to the distance, but I conjecture it is about fifteen leagues.

*Mr. Stuart.*—I wished to ask you the distance between Drummond's Island and the nearest point of the United States' shore of Lake Huron.

*Mr. Colman.*—I really do not know, but the distance is very short. It is about fifteen leagues to Michilimackinac from Drummond's Island.

*Chief Justice Sewell.*—Mr. Stuart's question is to the nearest point of the American, or United States' shore.

*Mr. Colman.*—I have not the smallest idea of the actual distance, but it is very near; so near that I know I thought, and, I believe, expressed my opinion, that there was great danger that De Reinhard might escape across the line, if he was so minded. Je ne connois pas la distance de Drummond's Island au plus proche rivage Américain, mais elle n'est pas grande, et je considérois dans le tems qu'il pouvoit échapper, s'il le vouloit.<sup>(2)</sup>

*Mr. Stuart.*—I have one question more. Has Mr. Colman been for a long time on terms of personal intimacy with captain D'Orsonnens? I will first ask you, Sir, how long you have been acquainted with captain D'Orsonnens?

*Mr. Colman.*—J'ai connu le capitaine D'Orsonnens depuis le mois de Juillet dernier.<sup>(3)</sup>

(2) I do not know the distance from Drummond's Island to the nearest American shore, but it is not great; and I considered at the time that he might have escaped if he had liked.

(3) I have known captain D'Orsonnens since the month of July last.

*Mr. Stuart.*—Since that time, Sir, have you known him particularly, or only seen him occasionally?

*Mr. Coltman.*—Only occasionally. Je ne me rappelle pas d'avoir été dans sa compagnie plus que six ou douze fois, excepté par affaires. <sup>(1)</sup>

The Honble. OLIVIER PERRAULT, *Sworn,*

*And examined by Mr. Stuart.*

*Mr. Justice Perrault.*—Je suis un des Juges de la Cour du Banc du Roi, pour le district de Québec, et j'ai siégé dans le mois de Mars, pendant tout le dernier terme criminel de cette Cour. Je me rappelle une enquête, ou le commencement d'un procès, dans ce terme là, sur un bill d'indictement, pour le meurtre d'un nommé Owen Keveny, contre le prisonnier actuel et un nommé Archibald M'Lellan, et que plusieurs témoins ont été examinés. J'ai connoissance que, de la part de la Couronne, il y avoit les nommés Hubert Faye, Jean Baptiste La Pointe, et le capitaine Protais D'Orsonnens, examinés comme témoins sous serment. J'étois présent tout le tems de leur examen, et j'ai pris des notes de leur témoignage, et je les ai ici devant moi. Ils contiennent, à ce que je crois, tous les faits qui m'ont paru de conséquence, au tems de l'examen, et je suis sur que je n'ai pas écrit d'autres choses dans mes notes que ce que ces trois personnes ont dit respectivement dans leur témoignage.

*Mr. Stuart.*—Avez vous connoissance que Hubert Faye a déposé que lui et La Pointe furent trouvés sur une petite isle après que le Sauvage José Fils de la Perdrix Blanche les eut quitté, par

<sup>(1)</sup> I do not recollect having been in his company more than half a dozen, or a dozen times, except on business.

un canot, et que là dedans il y avoit monsieur M'Lellan, Grant, Cadotte, et d'autres personnes ?

*Mr. Justice Perrault.*—Oui. Il l'a déposé.

*Mr. Stuart.*—Avez vous connoissance qu'il a déposé que M'Lellan lui a demandé, et que Cadotte lui a de même demandé, "Qu'avez vous fait du prisonnier Keveny?"

*Mr. Justice Perrault.*—Oui. Il l'a déposé.

*Mr. Stuart.*—Quelle journée a-t-il dit qu'ils ont vu le canot ?

*Mr. Justice Perrault.*—La cinquième journée. Il a déposé que lui et La Pointe, étant sur une isle, dans la rivière Winnipic dans l'été de 1816, le cinquième jour après le départ de José qui s'appelle Fils de la Perdrix Blanche, ils ont vu un canot qui venoit du Lac des Bois, dans lequel étoient M'Lellan, De Reinhard, Cadotte, sept métifs, un Canadien, et José Fils de la Perdrix Blanche, qui avoit une redingotte Ecossoisse sur lui.

*Mr. Stuart.*—Avez vous connoissance qu'il a déposé que monsieur Cadotte lui a demandé alors, "Qu'avez vous fait de prisonnier Keveny?"

*Mr. Justice Perrault.*—Il a déposé que monsieur Cadotte l'a dit en présence de M'Lellan, "Qu'avez vous fait du prisonnier Keveny?"

*Mr. Stuart.*—Avez vous connoissance qu'il a déposé que monsieur M'Lellan lui a proposé la même question ?

*Mr. Justice Perrault.*—Oui. Il a juré, "que monsieur M'Lellan a fait renouveler la même question, et qu'il a répondu, 'peut-être on le retrouvera. Nous l'avons laissé sur une petite isle.' Il a juré aussi, "que quand Cadotte lui a parlé, M'Lellan étoit bien proche de lui, et "après que lui (Cadotte) nous avoit traité (La "Pointe et moi) de vauxriens, et qu'il nous a dit "bien d'autres choses dont je ne me souviens pas "à présent."

*Mr. Stuart.*—Connoissez vous qu'il a déposé aussi que M'Lellan ne lui a rien dit au sujet du Sauvage José ?

*Mr. Justice Perrault.*—Oui. Il ajouta, " monsieur M'Lellan ne m'a rien dit au sujet du Sauvage José."

*Mr. Stuart.*—Avez vous connoissance que Jean Baptiste La Pointe a déposé, " Que dans le tems " que monsieur M'Lellan lui avoit donné les coups, " qu'ils n'ont pas parlé de Keveny ?"

*Mr. Justice Perrault.*—Jean Baptiste La Pointe étant assermenté, j'ai connoissance qu'il a déposé, " Qu'il a reçu dans le même tems et lieu des coups " de perche de monsieur M'Lellan. Qu'il (M'Lellan) avoit sauté à terre du canot et lui avoit " donné des coups de perche, et que dans ce moment là, il n'a pas parlé de Keveny, mais que " monsieur M'Lellan lui a dit qu'il le battoit pour " avoir battu le Sauvage."

*Mr. Stuart.*—Rappelez vous qu'il a dit, " qu'il ne souvient s'il avoit expliqué à monsieur M'Lellan la conduite du Sauvage vers Keveny qu'après " qu'il avoit embarqué ?"

*Mr. Justice Perrault.*—Je ne l'ai pas sur mes notes, et je ne me rappelle pas qu'il a dit n'avoir pas expliqué à M'Lellan la conduite du Sauvage vers Keveny qu'après qu'il avoit embarqué dans le canot de monsieur M'Lellan. Il a déposé, qu'étant dans le canot de monsieur M'Lellan, les bois brûlés ont dit, " qu'ils vouloient tuer monsieur Keveny," que Mainville disoit, " qu'il auroit son chapeau," Le Vasseur, " qu'il auroit ses bottes." Qu'ils en faisoient une risée dans le canot de cela, et que dans ce moment là les bourgeois ne disoient rien, mais rioient, et en faisoient un badinage.

*Mr. Stuart.*—Avez vous connoissance que sur son transquestionnement, il a déposé qu'il avoit



entendu un seul coup de fusil, ou deux coups de fusil? (')

(<sup>5</sup>) *Mr. J. P.*—I am one of the judges of the Court of King's Bench for the district of Quebec, and I sat in the month of March, during the whole of the last criminal term of that Court. I remember an enquiry, or the commencement of a trial, in that term, upon a bill of indictment for the murder of one named Owen Keveny, against the present prisoner, and one named Archibald M'Lellan, and that several witnesses were examined. I have a knowledge, that the persons named Hubert Faye, Jean Baptiste La Pointe, and captain Protais D'Orsonnens, were examined as witnesses upon oath on the part of the Crown. I was present all the time of their examination, and I took notes of their testimony. I have them here before me. They contain, I believe, all the facts which appeared to me to be of importance at the time of the examination, and I am certain that I wrote down nothing in my notes than what those three persons stated respectively in giving their evidence.

*Mr. J.*—Is it within your knowledge that Hubert Faye deposed that he and La Pointe had been found upon a small island after the Indian Joseph Fils de la Perdrix Blanche had left them, by a canoe, and that in that canoe were Mr. M'Lellan, Grant, Cadotte, and other persons?

*Mr. J. P.*—Yes, he deposed that.

*Mr. S.*—Is it within your knowledge that he deposed that M'Lellan asked him, and that Cadotte in like manner had asked him, "what have you done with the prisoner Keveny?"

*Mr. J. P.*—Yes, he deposed that.

*Mr. S.*—On what day did he say that they saw the canoe?

*Mr. J. P.*—On the fifth day. He deposed that he and La Pointe, being upon an island in the River Winnipic, in the summer of 1816, the fifth day after the departure of Joseph, who is called Fils de la Perdrix Blanche, they saw a canoe which came from the Lake of the Woods, in which were M'Lellan, De Reinhard, Cadotte, seven half-breeds, one Canadian, and Joseph Fils de la Perdrix Blanche, who had a Scotch plaid cloak over him.

*Mr. S.*—Is it within your knowledge that he deposed that Mr. Cadotte then asked him, "what have you done with the prisoner Keveny?"

*Mr. J. P.*—He deposed that Mr. Cadotte said to him in the presence of M'Lellan, "what have you done with the prisoner Keveny?"

*Mr. S.*—Is it within your knowledge that he deposed that Mr. M'Lellan proposed the same question to him?

*Mr. J. P.*—Yes: he swore, "that Mr. M'Lellan caused the

*Solicitor General.*—Would it not be the better way to have the whole of the deposition read?

*Mr. Justice Bowen.*—If in March term the same course of examination was not exactly pursued, I do not see how a contradiction is to be proved.

*Solicitor General.*—I believe we must move to have the whole of the learned judge's notes read. There was an apparent contradiction in his testimony relative to the "*coups de fusil*," but your honours will recollect that he explained himself,

same question to be repeated, and that he answered, "perhaps he will be found again. We have left him on a small island." He swore also, "that when Cadotte spoke to him, M'Lellan was very near him, and after that he (Cadotte,) had abused us (La Pointe and me,) for rascals, and that he had said a good many things to us, which I do not now remember."

*Mr. S.*—Do you know that he likewise deposed that M'Lellan did not say any thing to him relative to the Indian Joseph.

*Mr. J. P.*—Yes; he added, "Mr. M'Lellan did not say any thing to me relative to the Indian Joseph."

*Mr. S.*—Is it within your knowledge that Jean Baptiste La Pointe deposed, "that at the time Mr. M'Lellan struck him they did not mention Keveny?"

*Mr. J. P.*—Jean Baptiste La Pointe, being sworn, it is within my knowledge that he deposed, "that he had received, at the same time and place, blows with a canoe-pole from Mr. M'Lellan. That he (M'Lellan,) sprang on shore from the canoe, and struck him with a perch, and that at that time, he did not mention Keveny, but that Mr. M'Lellan told him that he beat him, for having beat the Indian."

*Mr. S.*—Do you remember that he said, "that he did not recollect that he had related to Mr. M'Lellan the behaviour of the Indian towards Keveny, till after he had embarked?"

*Mr. J. P.*—I have not got it on my notes, and I do not remember that he said that he had not related to M'Lellan the behaviour of the Indian towards Keveny, till after he had embarked in Mr. M'Lellan's canoe. He deposed that, being in Mr. M'Lellan's canoe, the half-breeds said, "that they would kill Mr. Keveny," that Mainville said, "he would have his hat," Le Vasseur, "that he would have his boots." That they made a jest of this in the canoe, and that at the time the gentlemen said nothing, but laughed, and made a joke of it.

*Mr. S.*—Is it within your knowledge that on his cross-examination he deposed that he heard only one gun fired, or two guns?

and your honours know that in any written document produced by any witness we have a right to demand the whole. What my learned friend calls examining his honour, Mr. Justice Perrault, is nothing more than just extracting from the judge's notes what suits his convenience, merely what answers his own purpose.

*Mr. Vallière de St. Réal.*—We presume that we have a right to introduce what is most to our advantage, and that it is not to be required of us to exhibit unfavourable testimony.

*Chief Justice Sewell.*—I really see no difference that can be made, whichever way the testimony is taken. If the course pursued by the gentlemen engaged on the defence is beneficial to the prisoner, you can, in cross-examining Mr. Justice Perrault, pursue one that shall be beneficial to the Crown.

*Mr. Stuart repeated his last question.*

*Mr. Justice Perrault.*—Sur son transquestionnement il a déposé, "Quand nous avons entendu les deux coups de fusil nous étions campés, et le tems étant calme, on entendoit de bien loin." Il a déposé aussi sur son transquestionnement, "pendant que Mainville raconta la manière dont on avoit tué Keveny, De Reinhard étoit occupé, mais qu'il a dit deux paroles, 'qu'il le prenoit pour un monstre,' et que, 'c'étoit une charité qu'il l'avoit faite.'"

*Mr. Stuart.*—Avez vous connoissance que La Pointe a déposé que De Reinhard parloit François comme un Meuron.

*Mr. Justice Perrault.*—Je n'ai pas sur mes notes qu'il parloit François comme un Meuron. J'ai pris, "que De Reinhard parloit François assez bien. Les Meurons ne parloient pas François comme les Francs."

*Mr. Stuart.*—Faye en parlant de l'arrivée du petit canot, le soir après la mort de Keveny, a-t-il

dit, "qu'il ne s'avoit pas si M'Lellan y étoit voir?"<sup>(\*)</sup>

*Mr. Justice Perrault.*—I have not taken that Faye said so. I have it not on my notes.

*Attorney-General.*—We do not wish to trouble his honour with any questions.

WILLIAM SAX, *Sworn,*

*And examined by Mr. Vallière de St. Réal.*

*Mr. Sax.*—Je suis un arpenteur juré. J'ai fait attention, et je connois bien la ligne de division entre les deux provinces du Haut et Bas Canada, d'après la proclamation de 1791 du gouverneur et conseil. L'endroit appelé les Dalles dans la rivière Winnipic, est beaucoup à l'ouest d'une ligne tirée vrai nord du lac Temiscamingue au territoire de la compagnie de la Baie d'Hudson.<sup>(\*)</sup>

<sup>(\*)</sup> *Mr. J. P.*—Upon his cross-examination he deposed, "when we heard the two guns fired, we were encamped, and the weather was calm, one could hear at a great distance." He likewise deposed upon his cross-examination, "whilst Mainville related the manner in which Keveny had been killed, De Reinhard was busy, but that he had made use of two expressions, 'that he took him for a monster,' and that, 'it was an act of charity he had done to him.'"

*Mr. S.*—Is it within your knowledge that La Pointe deposed that De Reinhard spoke French like a Meuron?

*Mr. J. P.*—I have not got on my notes that he spoke French like a Meuron. I have taken it, that "De Reinhard spoke French pretty well. The Meurons do not speak French like the Franks."

*Mr. S.*—Faye when speaking of the arrival of the small canoe, in the evening, after the death of Keveny, did he say, that "he did not know whether M'Lellan went to look?"

<sup>(?)</sup> I am a sworn surveyor. I have paid attention to the subject, and I am well acquainted with the line of division between the two provinces of Upper and Lower Canada, according to the proclamation of 1791, of the government and council. The

*Chief Justice Sewell.*—Now let us know, as from the battery of learning I see prepared, I suppose we are to have an argument, what it is that you propose to yourselves to effect by the evidence you are going into with Mr. Sax, which I suppose you intend to make a foundation for your discussion.

*Mr. Vallière de St. Réal.*—I intend to submit to the Court, and to support by authorities, deduced from history and law, that all that country to the south and west of that division-line Mr. Sax has been speaking of, which is known by the name of Canada, is Upper Canada, and then to contend that the offence charged in the indictment, if committed at all, must have been committed in Upper Canada, and the conclusion I shall arrive at is evident.

*Chief Justice Sewell.*—Very well, I now clearly understand your object, and have to say, that, as it is a point of law you intend to argue, that we do not require Mr. Sax's assistance upon that which it is our peculiar province to decide. As to any matter of fact, I am glad of evidence to assist me, but my conscience must be, on points of law, my sole guide. We will hear you with pleasure, as long as you like, in support of your position. There are the documents for you to consider which bear upon the point you state you intend to submit. If you can convince us of its correctness, it will be open to you to take whatever course may offer first, but we do not want, as at present advised, Mr. Sax's information, or any information, as to the limits of ancient Canada. The fact of where the Dalles are situated with respect to any

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place called the Dalles on the River Winnipeg, is much to the west-ward of a line drawn due north from Lake Temiscaming to the territory of the Hudson's Bay Company.

line you are at full liberty to obtain from Mr. Sax, though, I think, their locality is pretty fully established.

*Examination resumed by Mr. Vallière de St. Réal.*

*Mr. Sax.*—Les Dalles se trouveront au nord de la ligne établie entre les Etats Unis et le Provinces du Canada. (\*)

*Mr. Stuart.*—Call Jasper Brewer, Esquire.

*Chief Justice Sewell.*—Will you not take up the argument upon the point Mr. Vallière has stated he intends to submit? as, if he induces us to coincide with him in opinion, there is an end to this trial.

*Mr. Stuart.*—We have thought, as we have but one more testimony to lay before the Court, that we had perhaps better close the evidence, and as it will not occupy many minutes, that it might be advisable to defer the argument till the defence, as far as relates to witnesses, is terminated.

*Chief Justice Sewell.*—I have no objection, and as your case is so nearly finished, it may perhaps be advisable to complete your evidence.

**JASPER BREWER, Esquire, Sworn,**

*And examined by Mr. Vanfelson.*

*Mr. Brewer.*—Je connois le prisonnier a la barre, et je l'ai connu depuis sept ans. J'étois un officier (un lieutenant) dans le régiment des Meurons, et De Reinhard étoit dedans quatre ans. Il étoit sergent, et dernièrement couleur sergent. Il étoit

(\*) The Dalles will be found to the northward of the line established between the United States and the Provinces of Canada.

couleur sergent une grande partie du tems. Il avoit un caractere excellent au régiment, extrêmement honnête et doux. Il savoit s'exprimer dans la langue Française, mais non pas bien, bien indifferement. J'ai eu occasion de voir plusieurs de ses rapports; ils étoient des rapports de peu de conséquence, comme des rapports de garde, néanmoins ils contenoient plusieurs fautes de langue.

*Mr. Vanfelson.*—Regardez ce papier. (*La confession.*)

*Chief Justice Sewell.*—Pourquoi? (\*) What is Mr. Brewer to prove about this declaration? I suppose he never saw it till you put it into his hands.

*Mr. Vanfelson.*—Je dirai à la Cour. Je me propose de demander du témoin, si avec la connoissance qu'il a du prisonnier et sa connoissance de la langue Française, il considère que c'est possible qu'il pourroit avoir écrit cette déclaration. (1°)

*Attorney-General.*—I submit that my learned friends, can not be permitted to put such a question.

*Mr. Stuart.*—The question is then, whether the evidence proposed to be gone into by my learned

(\*) *Mr. B.*—I know the prisoner at the bar, and I have known him for seven years. I was an officer, a lieutenant, in the regiment of the Meurons, and De Reinhard was in it four years. He was a serjeant, and latterly colour-serjeant. He was colour-serjeant for a considerable part of the time. He bore an excellent character in the regiment, extremely civil and quiet. He could express himself in French, but not well, very indifferently. I had occasion to see several of his reports; they were reports of not much consequence, such as guard-reports, nevertheless they contained several mistakes in the language.

*Mr. V. F.*—Look at this paper, (*the confession.*)

*C. J. S.*—Why?

(1°) I will inform the Court, I propose to ask the witness, whether, with the knowledge he has of the prisoner, and of his acquaintance with the French language, he considers it possible for him to have written this declaration.

friend, Vanfelson, is, or is not, admissible. I think it is, and should like to know on what grounds it is to be resisted. As to what effect it may produce, that is not the question. Another gentleman may think differently to what I do as to that point. I should submit that, upon such proof as we have adduced, of the circumstances under which this pretended confession was made, that at the time of making it he was confined in a fort commanded by Lord Selkirk, to whom it is alleged he made it; when we recollect that this confession is as much an accusation of those whom his Lordship considered his enemies as a declaration of guilt, I think it comes before us in so questionable a shape, that we ought to be permitted to shew any thing calculated to weaken its claim to credit. But, confining myself to the naked question of law, I contend the evidence is perfectly admissible. It is to shew that the prisoner was, incapable, (from his ignorance of the language in which the paper is written,) of drawing up this pretended confession. I repeat that the question is not, what weight this may have with the jury, but whether we have, or have not, the right to put this strong circumstance in evidence before them. I confess I shall wait with some anxiety to hear what objections the Crown lawyers can make, and as I shall have the honour of replying to them, I abstain from urging any thing in addition to what I have had the honour to submit.

*Attorney-General.*—The legal objection I make to the introduction of this testimony, is, that it is not the best evidence which the nature of the case affords. It is in proof, upon your honours notes, that the confession is in the prisoner's own handwriting. Admit then, for a moment, that it was drawn up by another, still he must have known the contents, and if he copied them, and signed



them, he made them his own. That the confession he delivered to Lord Selkirk is in his own hand-writing, and that, acknowledging the contents were true, he signed it, and delivered it to Lord Selkirk, we have incontestibly proved by a witness, in whose presence the occurrence took place. It is a misapprehension on the part of my learned friends who conduct the defence, when they suppose that any thing done by Lord Selkirk or captain Matthey, relative to its being drawn up, can invalidate the confession. If there is any thing, captain Matthey or Lord Selkirk should be produced. If it is to be staggered at all, it must be by legal testimony, aimed directly at the facts we have proved, and not by asking the opinion of this, or any other gentleman, as to the supposed capability of the prisoner to do that which it is in evidence he did.

*Solicitor General*.—The question proposed by my learned friend, I contend, is perfectly irrelevant. I agree with my other learned friend, Stuart, that, in deciding upon its admissibility, what weight it may have upon the jury, ought not to form any part of the consideration, but that its claim to be made evidence should be estimated only by legal rules. But what would be the weight if every thing they offer to prove were admitted? What would it prove, but that some time ago the prisoner could not write so well as he does at present, or did when he drew up this confession? What effect is the circumstance, that in his military returns there were some few mistakes, to have on this trial? It is, however, of no consequence to go into an examination of these circumstances, as it is a matter of complete indifference who guided the pen in the making or preparing the confession which we have given in evidence, inasmuch as we have satisfactorily proved that he knew the con-

tents, and before he signed it, acknowledged to one of his fellow servants that they were true. I therefore oppose the question, 1st, on the ground taken by the Attorney-General, that it is not the best evidence, and 2dly, because it is totally irrelevant, and therefore inadmissible.

*Mr. Stuart.*—My learned friends state indistinctly, or rather misapply, the point that we do not produce the best evidence. For the purpose I have in view, I contend, that in producing Mr. Brewer, we do exhibit the best testimony. In producing Mr. Brewer, we examine a person, from whose situation in the same regiment with the prisoner, we are able to obtain a satisfactory account of the point we are desirous of establishing, namely, that this paper was not drawn up by the prisoner at the bar. We are not asking whether captain Matthey drew up the declaration, though, if I looked to my instructions, I might be tempted to suspect that he was the author of it, but, for our present purpose, it is unnecessary. His copying, signing it, and afterwards delivering it to Lord Selkirk, my learned friends contend made it De Reinhard's own, though it might not be originally written by him. The manner in which the witnesses, or some of them, were compelled to see him sign this paper, gives us a pretty good idea of the voluntariness of the whole transaction. Had this confession been in the Swedish or Turkish language, and signed by the prisoner, and delivered to Lord Selkirk, do the learned gentlemen intend to argue, that, unless I brought the person who actually penned it, that I could not be permitted by other witnesses, who, (like Mr. Brewer) had abundant opportunities of knowing his incapacity, to prove that a Swedish or Turkish confession could not be his own production, inasmuch as he was totally ignorant of the lan-

guage? and what is the difference between such a case and that we are discussing? We mean to prove that the individual at the bar is not able to produce such a paper, that he is not sufficiently acquainted with the language in which the paper is written, to have been capable of drawing it up, and to prove this, whom do we produce? why, an officer, under whom he served for four years, and who has known him seven, and this officer tells us that such was his limited acquaintance with the language in which this elaborate paper is written, that he could not even make out his report, as serjeant of the day, without its being full of errors. It is a fact I consider the jury have a right to be acquainted with, and I submit it with great confidence that the Court will maintain the same opinion.

*Chief Justice Sewell.*—The question we are called upon to decide ought not to be complained of by the Court. The counsel for the prisoner are called on by their sense of duty to offer it, and the Court have no disposition to slight, or disapprove, their exertions. Counsel on the one side, and on the other, have necessarily a certain bias. We are to hold the balance, and to decide, whether their several propositions shall, or shall not, be admitted, and in arriving at this decision, we can have but one principle of action, however unpleasant the enforcing it may be, and frequently is. The principle is: If the proposition is not according to law, we can not admit it, but if it is, we must. Now, what is the question proposed to be put to the witness? “Is it your opinion that the prisoner ever composed this paper?” If he answers, not, is it not mere matter of opinion? and are we not bound to reject opinion? It is clear, that if the contrary were to be allowed, we should be left in the wide field of presumption, all would be

hazard as to whether it was wrote by somebody else : whether forced upon him, or voluntarily adopted by him, or, whether it was first written by De Reinhard, and the language being corrected by another, then copied by him; would not every thing be mere conjecture and uncertainty? Is it not an undoubted fact, upon evidence, that it was his own production? Who is to say, that, if it was not the work of his own head and hands, that he did not, in the most solemn manner, adopt it and make it his own? *Primâ facie*, it was his own, and, till it is proved by positive evidence, that it was illegally put upon him, whether it was first written by some one else and then copied by him, or not, still it must remain his own act. An act evidently done in furtherance of the declaration made to the witnesses who have deposed to that point, and signed by himself, and then delivered by himself to the magistrate as his declaration of what he knew of, and what share he had taken in, the melancholy transaction, and all this is done in the presence of a number of witnesses, one of whom, at least, could not be supposed to be unfriendly, and to him he particularly acknowledged the truth of the paper. After signing it, he deliberately put his ultimatum to the business, by delivering it to the magistrate as his own confession, stating that he had no desire to add to, take away, or alter, any part of it. What difference, under these circumstances, is it to make if even it had originally been written by another? he copied it, he must, therefore, have necessarily known the contents, and if any misstatement existed, he could have corrected it. It is manifest that he was not taken by any surprise, but must have been well aware of what he did. With his motives for so doing, we can have nothing to do, but you may, if you can, prove an

undue influence to have been used towards him, but to go farther than this, or to admit such a question as you now propose, would be to open the door of a labyrinth, to which there would be no clue by which to escape. If you want to remove this confession, attack it broadly, openly, and legally. You should begin by proving, if you can, that it was forced upon him *in toto*, or that it resulted from an undue influence exercised over his mind, but the one or the other must be substantiated by positive evidence, and before that is done, you ought not to expect us to tell the jury that they are bound to put this confession altogether out of their consideration, for we can not do it. Relative to Mr. Dease, I am sorry to say, I consider your argument to make against him. You say he was a witness by compulsion; a witness to what? to De Reinhard being forced (according to the inference you wish us to draw) to sign this paper against his will? Where is Mr. Dease? Whose duty was it to bring him here? Certainly the prisoner's. But what if Dease was an unwilling, or compulsatory, witness; what if Lord Selkirk said, this man is about making a confession, and you, as one belonging to the same employ, *shall* see him make it; you *shall* be present, and see all that passes. *shall* yourself read his confession, *shall* witness that every thing is done fairly on the one side, and voluntarily on the other side? If it is said that Mr. Dease was not sent for till the whole machinery had been prepared, still the fact returns that with the prisoner is the knowledge of who was present. The same thing occurs relative to the writing. If he did not write it himself, must it not evidently be within his knowledge who did write it? and, yet, without proving that any effort has been made to bring these persons here, you ask to go into evidence

to prove that the prisoner did not write it. I am sorry, at all times, to exclude any thing in the shape of testimony brought forward by a prisoner, or his legal advisers, but, when compelled by duty to do so, I can not help it. I am decidedly of opinion this question can not be admitted.

*Mr. Justice Bowen.*—I am clearly so too. It is no fact that you are asking to let in; it is merely a matter of opinion which the gentlemen at the bar know, equally with the Court, can not be admitted as evidence. The fact that when De Reinhard was a serjeant in the Meuron regiment his reports in the French language were faulty, you prove, and the jury will make what inference they please from that fact, and perhaps they will make the same as the gentlemen concerned for the prisoner at the bar are desirous of extracting from Mr. Brewer in the shape of evidence. There are twelve gentlemen sworn to decide upon the facts, and they are capable of judging, without having the opinion of Mr. Brewer, upon the probability of the prisoner having written the paper in question, and it is their peculiar province to do so. Opinion can not be received as evidence, and it is well for a prisoner that it can not, inasmuch as there might be wrong opinions given in evidence, and those unfavourable to him. The question you propose, being only as to the opinion of Mr. Brewer, must not be asked, because the answer can not be received in evidence. The fact whether he ever saw any of the prisoner's composition so correct as this paper you may obtain from him.

*Examination resumed by Mr. Vanfelson.*

*Mr. Brewer.*—Je n'ai jamais vu aucune écriture de la part du prisonnier, aussi correcte que cette déclaration datée le vingt-huitième d'Octobre 1816;

son écriture étoit toujours pleine de fautes. Je connois le capitaine D'Orsonnens, et je l'ai vu souvent écrire. La signature de ce papier, à moi maintenant produit, est l'écriture propre du capitaine D'Orsonnens, et les qualités qui suivent le nom, la ressemblent, et je n'ai aucun doute que les mots "Capitaine commandant le fort du Lac la Pluie," sont de l'écriture propre de lui le capitaine D'Orsonnens.<sup>(11)</sup>

*The Capitulation between captain D'Orsonnens and Mr. Dease put in and read. (Appendix F.)*

*Cross-examination conducted by the Attorney-General.*

*Mr. Brewer.*—J'ai quitté le régiment avant De Reinhard, en 1814, vers la fin de l'été. Quand j'ai parlé de sa connoissance de la langue Française, j'ai parlé de sa connoissance alors, comme je ne l'ai pas vu depuis.<sup>(12)</sup>

**MR. WILLIAM S. SIMPSON, Sworn,**

*And examined by Mr. Vallière de St. Réal.*

*Mr. Simpson.*—I am at present employed as an agent. I was present during the trial of Charles

<sup>(11)</sup> I never saw any writing of the prisoner's so correct as this declaration dated the twenty-eighth of October, 1816; his writing was always full of errors. I know captain D'Orsonnens, and I have often seen him write: The signature to this paper, now produced to me, is the proper hand-writing of captain D'Orsonnens, and the qualifications which follow the name, resemble it, and I have no doubt that the words "captain commanding the fort of Lake la Pluie," are in the proper hand-writing of him, captain D'Orsonnens.

<sup>(12)</sup> I left the regiment before De Reinhard, in 1814, towards the end of the summer. When I spoke of his knowledge of the French language, I spoke of his knowledge at the time, as I have not seen him since.

De Reinhard and Archibald M'Lellan in the Court of King's Bench in the term of March last. I was present during the whole trial, being employed by the Earl of Selkirk to take the proceedings stenographically, which I did. I remember that captain Protais D'Orsonnens was examined as a witness on the part of the Crown in that case.

*Solicitor General.*—I do not know what my learned friends intend to prove by this gentleman, nor, indeed, do I conceive they ought to be permitted to examine him, as, certainly, his notes of the trial are not the best evidence. If my learned friends wish to prove contradictions in the evidence given on the two trials, there are your honours' notes, or the notes of Mr. Justice Perreault, taken under oath, which they can refer to.

*Mr. Justice Bowen.*—It is certainly a most extraordinary, not to say indecorous, proceeding to examine a short-hand writer, who is not upon oath, to disprove the notes of two judges who take notes under their oath of office.

*Mr. Vallière de St. Réal.*—We were merely going to ask Mr. Simpson, whether or not captain D'Orsonnens did, according to his notes, in describing the sort of French De Reinhard spoke, say, "Il parle François assez bien, il parle comme un Meuron."<sup>(13)</sup> His honour Mr. Justice Perreault, probably thinking it of no consequence, did not take it, though captain D'Orsonnens certainly did make use of that particular expression in describing De Reinhard's mode of speaking French. It is, however, of no consequence. I believe the case on the part of the prisoner is now closed.

*Mr. Stuart.*—For form's sake, we wish to put in and have read, the Prince Regent's proclamation.

*Attorney-General.*—We have no objection.

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(13) He speaks French pretty well, he speaks it like a Meuron.



*A copy was then offered; but being printed at York, was objected to, as not being an official production. A copy printed at Quebec by his Majesty's law-printer was therefore sent for.*

*Mr. Stuart.*—We have closed our testimony, with the exception of the proclamation, which we will put in presently.

*Attorney-General.*—We shall now proceed to call witnesses to rebut the allegations relative to the excess of force or violence, which has been so frequently adverted to in the defence.

*Mr. Stuart.*—I certainly object to any farther evidence being gone into. The Crown closed its case, and we entered upon our defence. Nothing remains now but the argument which we are ready to enter upon.

*Attorney-General.*—I beg my learned friend's pardon, but the matter is not quite so near settled. The necessity for our exhibiting additional testimony arises from the nature of the defence they have set up. My learned friends have made their principal reliance, the state of the country where we allege the murder to have been committed. They have represented, that a state of warfare, (called by them a private war) existed, and that the confessions we have proved, all resulted from terror, inspired by the presence of a military force. Now, we desire to rebut this testimony, by proving that it was not a military force, but merely a number of persons supporting a constable, and enabling him to execute a legal warrant, which had been resisted. This is completely new matter. It was not alluded to on the part of the prosecution, so as to render it necessary for the prisoner to disprove our statement. My learned friends have brought it forward as their mode of accounting for a series of *viva voce* declarations of guilt on the part of the prisoner, terminating in

a written confession made at Fort William. I should certainly think I might call the officer, who had to serve this warrant, to shew that he was resisted in the execution of the process of a civil magistrate, and that the force that was used was no more than what was indispensibly necessary to enforce obedience to the authority of a civil magistrate.

*Solicitor General.*—I should contend, may it please the Court, that we have a right to impeach the defendant's witnesses, as well as the defendant those of the Crown, if not, we do not stand upon equal ground. If unfounded statements are made by witnesses on the defence, are we to be debarred from rebutting them, because we have said our case was closed? I should think not. If our witnesses are impeached, shall we not be permitted to rebut such impeachment? I do not mean to say, that the course we propose to pursue, is a usual proceeding, because it is not often that it is rendered necessary, but it is certainly a very justifiable one. I do not know that I can refer to any actual authority upon the subject, but the reasonableness of the proposition renders it unnecessary that I should. A defence usually consists of a negation of that which has been proved on the part of the prosecution, but the defence set up in the present case, is not a simple denial of the facts brought forward by us, and this denial supported by evidence, but they have gone into a long investigation of a number of witnesses to shew that a state of warfare existed in the Indian territory, and that it was under the influence of terror that the several confessions were made, therefore they ought to be set aside. We wish to shew that no such thing existed, and that all the violence, (if any was resorted to) was rendered necessary by the resistance of legal measures. We could not

anticipate the defence, but, as in it they endeavoured to impeach our witnesses, we have a right to examine witnesses and produce evidence to rebut it. Where authorities are silent on criminal subjects, the rule is to have reference to civil cases, and here we shall certainly find precedents to justify the course we are desirous of following. When the defence consists of an impeachment of a plaintiff's witnesses, the Court at Westminster Hall daily present instances of the rebutting such evidence by the examination of additional witnesses, and if it is allowed in civil cases, why should it not in criminal? We wish to prove that a warrant was issued to arrest certain persons, and that in consequence of its being resisted, it was necessary to employ a number of persons to support the constable, and thus rebut the charge of a military force having been employed.

*Mr. Justice Bowen.*—In M'Nally, 380, this point is considered. He says, if prisoner's counsel examine witnesses to general character, or to particular facts, then the witness for the Crown, thus impeached, is entitled to rebut these facts; and call witnesses to his general character.

*Solicitor-General.*—The same doctrine is laid down also by Mr. Baron Gilbert, and in Phillips.

*Mr. Stuart.*—In reply to my learned friends, I beg to remark, that, *prima facie*, a very strong presumption against them, is, that they are completely out of the regular course. We daily see criminal proceedings, but we never before heard such a thing asked by the Crown as to be allowed, after the defence is gone through, to produce additional evidence against a prisoner. The officers for the Crown produce their case, and are asked, have you done? They answer, yes, and then the prisoner proceeds on his defence, and introduces his witnesses, for what purpose, but to rebut that

which has been exhibited in evidence by the Crown? After his case is closed, are the Crown officers to rise again, and ask to produce more evidence, because they feel they are too weak, and that conviction will not follow? Certainly not. What was the case which the Crown had to make out? That the prisoner at the bar had committed the crime of which they accuse him in the indictment. To do this, they examined a number of witnesses to support, by parole testimony, a written confession, and when they thought they had fully established his guilt, and had ensured a conviction, they informed the Court they had closed their case. We were, accordingly, put on our defence. In the prosecution of it, have we produced any new facts? any facts unconnected with the case they made out? clearly not; but we have opposed to their evidence, testimony of a contradictory nature, and does not that occur upon every trial that takes place? How did the Crown prove its case? By getting admitted a number of confessions. How do we prove our's? We shew circumstances, which, we contend, will lead the jury to give no credit to them. Are the Crown officers now to turn round upon us, and say, we did not know, or to use Mr. Solicitor's own words, "We could not anticipate your defence," we must strengthen our case or you will escape? What was our object in meeting the case of the Crown officers? Our sole object was to prove that these confessions were not entitled to credit, but we did not do it by attacking the credibility of their witnesses. We produced a number of facts, which we thought well calculated to remove any unfavourable impression they might have made on the minds of the jury. For example, we proved a capitulation between captain D'Orsonnens and Pease, and that, in signing it, captain D'Orson-

nens styled himself, "captain commanding the fort of Lac la Pluie," for what purpose was this done? why, that the jury might contrast this fact with the declaration of captain D'Orsonnens that he was nothing more than "*un individu simple*." As a substantial fact, we offered evidence that Fort William was taken by a military force, and that De Reinhard knew of it. Is not this the very substratum, the very *res gesta* of our defence? and is it not in direct contradiction to that exhibited by the Crown? But is this impeaching their witnesses so as to entitle them to come to your honours, and ask permission to examine additional witnesses? Certainly not. The distinction between this case and that, is a marked, is a broad, distinction. Our impeachment of the witnesses on the part of the Crown has been by shewing facts, and nothing now remains but for the jury to judge on which side credibility preponderates. It is really painful to be obliged, at this late day, to argue first principles, but the request of the Crown officers compels me to trespass on the time of the Court. Allow me to advert to the every-day occurrences of our civil Courts, (as the learned Solicitor General remarked, that, when criminal authorities were not to be found, reference should be had to the practice in civil cases) and ask where I am to seek for the authority that allowed a plaintiff to say, after the defence, that the whole of his case had not been brought forward, and then permitted him to bring more testimony to strengthen his case? Such an authority can not be found, for the plainest of all reasons, because, if ever it has been asked, it never has been granted. If it were law, that whenever a witness was contradicted by positive facts being sworn to, that the case should, as it were, be re-opened to let in more testimony, we have all of us most miserably

misunderstood the law up to this moment, and it is, indeed, high time that we desisted from practicing it. But, so far from being law, it is to subvert, to destroy, to overturn, the very fundamental principles, to root up the very foundation, on which the superstructure of law is raised. Admit this doctrine once to be law, where are we to stop? If the Crown is permitted to rebut our testimony, it can not be denied to us to rebut theirs, and for how long is this rebutting to continue? What is the criterion by which its extent is to be limited? Who is to have the last blow? The Crown finished their case, and we began, and because we have shaken it, are they to step in and say, now we'll bring in more testimony? Because we have shewn, incontrovertibly shewn, that these pretended confessions were forced from him by the peculiar state of the country, is it competent to the Crown now to bolster them up by additional evidence? It was a part, an integral part, of their case to have shewn, if they intended to prove the guilt of the prisoner by his own confessions, that at the time of making them, he was free, that there was not even a shadow of suspicion that he was otherwise. This they did not do, but, seeing that we shew he was not free, not only not free, but that he was actually in a state of illegal duress, they say we have impeached the credibility of their witnesses, and therefore they are entitled to go into evidence to support them, and to rebut our testimony. But it is a mere sophism, and not an argument, that my learned friends resort to. The sophism appears to be this—"You have controverted what we advanced, and by your witnesses have shaken our credit, therefore we have a legal right to support our own witnesses." The sophism rests in an inaccuracy of language. It is not a verbal attack that we have made upon their

witnesses. We have not controverted captain D'Orsonnens generally. We have not said that he was an attainted witness. We have not endeavoured to prove, generally, that he was a bad character. We have not enquired whether his erroneous statements resulted from party spirit. We have not pretended to say that captain D'Orsonnens acted from malicious motives, or that he was unentitled to general credit. All we say, is, that we have proved, and triumphantly proved it too, that particular facts sworn to by captain D'Orsonnens turn out to be erroneous. With reference to the authority of M'Nally, referred to by your honour, I beg permission to remark, that it refers only to cases very dissimilar to the situation in which this stands. Relative to witnesses to general character, we have examined none. I repeat it, we do not wish to impeach captain D'Orsonnens' general character. As to particular facts, we have produced no insulated fact not connected with the case, and such, I conceive, any fact must be, to be a particular fact within the meaning of the authority cited, for if a fact is connected with the case, it ceases to be a particular fact, and such is every one that we have exhibited in evidence. We are, therefore, without the rule altogether. To test the argument made use of on the other side, I would ask, where is the line to be drawn? If it is not where I put it, where shall it be put? If the Court decide, they may proceed to prove additional circumstances to rebut particular facts, I should like to know how many particular facts are to be rebutted? Is it five, ten, the half of what have been produced, or all? What is a whole, but a number of particular facts made up together. Where then is the line to be drawn? Where are we to stop? Admit this doctrine, and we launch ourselves on the wide sea of difficulty,

doubt, uncertainty, and confusion. Let us suppose, for a moment, that all the principles of law could be overset, and the evidence admitted which the Crown asks to have let in; we must be allowed to reply to it, and where is it to end? The very object of offering evidence on a defence is, to controvert that which has been offered on the part of the Crown, and can not, therefore, furnish a reason for admitting additional testimony on the part of the Crown. In the present case again, there are many other points I might advert to. The very nature of the evidence proposed is objectionable. Who is to prove it?—why, the very persons of whom we complain; a part of this very force who, from their peculiar situation, we could not cross-examine, because they would accuse, and necessarily expose themselves to punishment. I could not ask one of those witnesses, had you a musket? were you armed, and did you act like a party of moss-troopers? because, if they answered truly, they would be liable to be indicted, and as the Court has done before, it would interpose its protecting arm were such questions attempted to be put, and tell the witness he need not answer them. Again, the very men who are to be witnesses, are, and have been during the defence, sitting on these benches. I do not mean to cast any imputation on any one of them, but on this solemn occasion, it was thought necessary that every witness should leave the Court till his evidence was completed, and for what reason, except that he might not be exposed to any improper bias from hearing the depositions of other witnesses? If there were no other circumstance, I should think this alone were sufficient to exclude the proposal of the Attorney-General. He said he had closed his case, and thinking he had finished, the prisoner entered upon his defence. Confiding in the declaration of the



Crown officers, he has produced his evidence, and the whole has been exhibited before the very persons who are now to be called upon to prove the additional part of the case. It is a proceeding as novel, as extraordinary, and I feel confident the Court will agree with me that it is as inadmissible as it is unprecedented.

*Attorney-General.*—Upon consideration, we are not disposed to press our proposition, and particularly in consequence of the last observation which fell from the learned gentleman. The witnesses whom we proposed to examine, having been in Court during the defence, leads us to abstain from pressing that, which, nevertheless, we consider ourselves legally entitled to, if we persisted in demanding it.

*Chief Justice Sewell.*—The very object of a trial by jury is, between affirmation on the part of the Crown, and negation on that of the accused, to discover the truth. The Crown, in the first instance, (take a case of homicide, for example,) avers the guilt, the defendant brings affirmative testimony, and alleviates the offence from homicide to manslaughter, which has a tendency to abridge the punishment. The Crown says, I affirm, and am ready to prove the defendant stabbed him. A. comes into Court, on his defence, and says, I am not guilty; B. met me in the street, and drew his sword on me, and it was in self defence I wounded him. Here are two affirmations, one on the part of the Crown, that it was homicide, and another on the part of the defendant, alleviating the killing to manslaughter. Shall not the Crown be permitted to prove this alleviation false? certainly it must. A word with respect to testimony. All persons brought before the Court are presumed to be honest, it is therefore not necessary that the Crown should prove its witnesses to be entitled to credit, because

the presumption is that they are so. The defendant comes forward and discredits this testimony. Shall not the Crown be permitted to prove this derogation is not correct? certainly it must be allowed. These are principles which the Court has always held and acted upon, and it must continue to do so, till it gets better light upon the subject than at present it possesses. But, on the other hand, the Crown must invariably bring all its case forward at once, or how shall the prisoner know what he has to answer? If the contrary were allowed, a prisoner never could know what was necessary to his defence. Were it permitted to hold back any part of the case, then neither party knowing whether the whole were finished, the defendant would proceed to build his case upon the other, and the Crown coming in with that which before it held back, would render a reply necessary, and thus the case would become involved in what may be called a complete *bruielle*, a word I make use of, because I know none in English which so fully expresses my meaning.

*The Prince Regent's Proclamation was then put in and read. (See Appendix G.)*

*Chief Justice Sewell.*—What course, gentlemen, do you purpose pursuing in the argument you are about to submit to the Court?

*Mr. Stuart.*—I propose to submit some general observations in opening the argument, and I shall be followed by one of my learned friends who is with me, he will enter fully into the authorities we are desirous of producing. In the observations I shall submit, I can not help adverting to some of the facts which have appeared in the course of this protracted trial; facts of such a nature —

*Attorney-General.*—We certainly object to any observations being made upon what has been produced in evidence. The learned gentleman knows

it is inadmissible. He might as well address the jury, which I am sure he would not attempt but really there is very little difference between making observations on the facts of the case, as proposed by my learned friend and addressing the jury.

*Mr. Stuart.*—I shall have the honour of contending that from what we have shewn the confession is not now admissible evidence to go to the jury.

*Chief Justice Sewell.*—That is decided, we therefore can not hear you upon that point.

*Mr. Stuart.*—I should think, your honours, I might be permitted to argue that we have produced evidence on which, (as we contend,) it is inadmissible evidence to go to the jury.

*Mr. Justice Bowen.*—So you may at another stage of the proceedings, should they unfortunately reach that length. In arrest of judgment you would have a right to argue that point.

*Chief Justice Sewell.*—It is not because we take it to be evidence to go to the jury that it is to deprive them of their province of judging what credit is due to it. No Court ever did that, except Courts where arbitrary power usurped the seat of justice. The Court told you, during the proceeding, the view they took of their power; they told you, had you made out a case to justify it, they would have said this can not go to the jury, but after having admitted evidence to go to them because you could not do so, to ask what you asked, was to require the Court to extend its power beyond its limits, and to trench on the real, the undeniable, province of the jury, and we said, no, we can not keep it from them, but it shall go to the jury under all the circumstances you have proved, and which you consider ought to invalidate its credit. If the jury think with you it will be well for the prisoner, but it is no longer us that have to do with the confession, and therefore it would be useless to address

us on the subject. We admitted it to go to the jury after hearing you very fully upon the subject, and we can not now take it away. Nevertheless it goes to them accompanied by all you have proved relative to it, they are now the judges, that is the tribunal which must decide, for we can have nothing to do with it.

*Mr. Stuart.*—I am not going to argue in opposition to the opinion of the Court, but I did not consider that I was completely debarred; by its decision during the progress of the trial, from calling the attention of the Court to it, now we have proved such strong additional circumstances.

*Chief Justice Sewell.*—Mr. Stuart, I am convinced that you are only doing your duty in the course you take, because it appears to you a justifiable one, and calculated to be advantageous to the prisoner, but I am also convinced that you will acquiesce with us that we are only aiming to do ours, and I think you will also acquiesce with us, that, after our decision, we can have nothing to do with the confession. I repeat it to you, Mr. Stuart, we did hear you upon it; we heard you, as you know we always do, with pleasure, and we were, however unpleasant, compelled to decide against you. We can not resume the subject; it is finished. On the point your colleague has stated you wish to argue, the Court will hear you with pleasure.

*Mr. Stuart.*—In excepting to the jurisdiction of the Court, I beg leave to remark, that the exception is made as an exception by the counsel of the prisoner only. Our opposition does not arise from any apprehension as to the verdict of the jury ultimately being that De Reinhard is innocent; but we are counsel for the prisoner; and your honours know that even of technical objections, where the life of a defendant is at stake, it is the duty of his counsel to avail themselves, and although they

entertain no doubt of the acquittal of the prisoner, in the duty which, as his legal advisers, we have to perform, and a trying and distressing duty it is, we feel ourselves compelled to neglect nothing that, by possibility, can lead to his acquittal. We therefore except to the jurisdiction of the Court, and as I shall have the honour of being followed by a learned friend with me who has bestowed considerable time and attention to the subject, I shall trouble the Court very shortly in opening, as I shall have an opportunity of again addressing the Court in reply to the Crown Officers. The first objection I shall have the honour to submit, is that the offence charged in the indictment, if committed at all, was not committed in the Indian territory, as alleged, but in his Majesty's province of Upper Canada.

*Chief Justice Sewell.*—Will you stay one moment. If I understand you correctly, it is a geographical objection you make. You argue that this spot, "en haut des Dalles," is not in the Indian Territory, but in the province of Upper Canada.

*Mr. Stuart.*—That is my proposition, and in support of it, I proceed to remark that the first enactment relative to the management of this portion of His Majesty's dominions took place in 1763. It is known to all of us, that the conquest of this portion of North America, by the British arms took place in 1759 and 1760, but, from that period to 1763, nothing was done to provide a government for, or to regulate, this conquered country. In that year, (1763) a province called Quebec was created by proclamation. The affairs of this territory, notwithstanding the proclamation of 1763, remained in a very unsettled state till the year 1783, when the whole of the country called Canada was ceded to the English, who have retained posses-

sion ever since. According to the most respectable historians, we contend, that the portion of country thus ceded was exceedingly extensive, going, agreeably to some writers, as far as the river Ohio. The pretensions of the French, as we gather from history, carried them into countries distant, remote, and in fact unconnected altogether with the province created in 1763. The people of Montreal and Quebec, we shall shew, had long traded into those wilds, which are now so fancifully called the Hudson's Bay territory, and from which, after an uninterrupted enjoyment of traffic for ages by the French traders, it is now sought to exclude enterprise and competition. It must be apparent to every one, that after the conquest, this immense tract of country required a government adapted to the change which had taken place in its circumstances by becoming a province of another nation. Its remote situation from the parent-state, rendered it impossible, as well as unadvisable, to legislate hastily for its necessities, but the parliament proceeded to provide what it stood most in need of. Accordingly, by the 14th of the king, the province of Quebec was enlarged, and here let me remark, that a great deal of the misapprehension which exists on the subject, arises from confounding the province of Quebec, as thus created and enlarged, with what, under the French regime, was denominated Canada. This act merely provided a government for a portion of the conquered country, as will immediately appear on referring to history. Adverting to the 14th of the king; the act of 1774; it will be seen that the country, erected and enlarged thereby into the province of Quebec, was not commensurate to the country known by the name of Canada, as a French colony, and recognized as such by the French and British governments. The object of

this legislative provision was to provide a government for that portion of his Majesty's province, whose necessities required it. It was to establish a temporary government for a portion of an immense continent, larger than England herself, that this act of the British parliament provided. As settlements pushed themselves into the settlements of Upper Canada, as civilization extended its stride, it became necessary to adopt a government for the whole, and the interval from 1774 to 1791, afforded time to maturely form a suitable government for the immense territory known as Old Canada.

*Chief Justice Sewell.*--You are making a small mistake, it was not to provide a government for Old Canada that the act of 1791 provided, but for the new province of Quebec.

*Mr. Stuart.*—I know the act of 1791 mentions the province of Quebec, and it speaks also of Canada. The proclamation issued in consequence of this act, I contend, must be construed liberally. It must be looked at, not as a deed of property, in which, only a minute survey can be taken; we must not look at it like lawyers in our study; we must not contemplate it as the act of an attorney surrounded by his musty papers and parchments; but we must view it as the act of great and enlightened statesmen, legislating for the population of an immense and distant territory, with whose wants they were acquainted, and whose affections they were desirous of securing by liberal and magnanimous policy. But, even looking into this proclamation, strictly and minutely, we shall find this country, where it is alleged the offence was committed, to be strictly and minutely the province of Upper Canada, agreeably to the act of 1791, upon which the proclamation was grounded. This act, in providing for the more suitable government of

the province, created by the former one of 1774, divided it into two parts, and, we think, even in a strict construction of the provisions of that statute, and the proclamation issued in consequence of it, that, if this offence had been committed at all, it has been committed in the province of Upper Canada, and, consequently, beyond the jurisdiction of this Court. But let us look into this act and proclamation, with a broad, liberal, and enlarged disposition, and we must arrive at the same conclusion, that, agreeably to this act, this country must form a part of the province of Upper Canada. I am well aware, that in the preamble to this act the province of Québec is adverted to, but the preambles of acts of parliament are never looked at as explaining the design of the legislature, except doubt arises in the construction of the enacting clauses. It is almost superfluous to remark that, for ascertaining the spirit of an act of parliament, we must refer to its enacting clauses; if they are clear, there is no necessity for reference to the preamble, which is but an introduction, a sort of preface, setting forth the necessity for legislative provision on the subject of the act, but not making the provision. On the other hand, I freely admit, if the words of the act are uncertain, if different constructions may be put on the enacting sections, then we ought to go back to the preamble for the intention of the legislature, but that should never be done except doubt and uncertainty prevail in the body of the act. Adopting this sound principle, let us take up the act we are at this moment considering, and we shall find it so clear that misunderstanding can not exist for a moment. In the proclamation issued in consequence of the 31st of the king, cap. 31, we find the boundaries of his Majesty's province of Upper Canada thus set forth. After a short introduction.



stating that his Majesty had thought fit, by and with the advice of his privy council, by an order of council, to divide his province of Quebec into two distinct provinces, to be called the province of Upper Canada, and the province of Lower Canada, by separating the said line of provinces according to the following line of division, viz:—"to commence at a stone boundary on the north bank of the lake St. Francis, at the cove west of *Point au Bodet*, in the limit between the township of Lancaster, and the seigneurie of New Longueuil, running along the said limit, in the direction of north, thirty-four degrees west, to the westernmost angle of the said seigneurie of New Longueuil, thence along the north western boundary of the seigneurie of Vaudreuil, running north, twenty-five degrees east, until it strikes the Ottawa river, to ascend the said river into the lake Temiscaming, and from the head of the said lake, by a line drawn due north, until it strikes the boundary line of Hudson's Bay, including all the territory to the westward and southward of the said line to the utmost extent of the country commonly called or known by the name of Canada."

Now, what was the utmost extent of the country commonly called or known by the name of Canada, we all know. It is that territory conquered by British arms in 1759, and ceded finally in 1763, to the British Crown, it was Canada recognized as such in treaties of peace, and other most important documents entered into between France and England. That is Canada, the whole of which, after the act of the 31st of the king, by the advice of his privy council, his Majesty declared it was his royal will and pleasure, should form the province of Upper Canada, with the exception of the comparatively small part situated to the north and

east of those boundaries which constitutes the province of Lower Canada. The province of Quebec was quite another thing, and could not have been meant as designating the boundaries of Upper Canada. If that had been intended to form its limits, that is, the limits of the new province, the course was simple and easy, it was to have said the utmost extent of country commonly known as his Majesty's province of Quebec; but that is not the case, the boon was not so circumscribed. Let us now, for a moment, examine the fact, strictly and minutely, according to rigorous municipal principles, and we shall, I think, arrive at a similar result. His Majesty's province of Quebec was always defined, whereas Canada was more undefined. Had the province of Quebec been intended as exhibiting the proposed boundaries of the about to be created province, a word could have sufficed to express his Majesty's pleasure. It would merely have been necessary to have referred to the royal proclamation of 1763, founded on the treaty of Paris, in conjunction with the act of 1774, and we should immediately have known the extent of Upper Canada, but it is manifest that such was not the intention, but that, instead of the then province of Quebec, as established by the act of 1774, it was intended, as clearly expressed in the proclamation issued in consequence of the 31st of the king, the act by which it was constituted a province, that Upper Canada was to include "all the territory to the westward and southward of the said line" (the line of its boundaries) "to the utmost extent of the country commonly called or known by the name of Canada." I am fully aware that I may be told that in the preamble of this act and of the proclamation the term, "His Majesty's province of Quebec" is made use of; it is almost unnecessary for me again to remark

that the preambles of acts of parliament are, in general, loosely and vaguely drawn up, and ought to form no criterion by which to estimate the objects contemplated by the acts themselves. That this is the case is known to every lawyer and every legislature. It is to the enacting clauses of any statute that we must refer to ascertain with accuracy the provisions of the act. Adopting this certain rule for our guide, here we have a clear manifestation of the intention of parliament in the act of 1791; it was to create two provinces of Canada, and, in defining the limits of the Upper; it declares that it shall, in a certain direction, include "the utmost extent of country commonly called" What? the province of *Quebec*? No! It shall include "the utmost extent of country commonly called and known by the name of *Canada*." The utmost extent of that country which, as I have before remarked, was the conquest of British valour in 1759, by force of arms, and which was finally ceded to Britain by the treaty of Paris of 1763, of that immense territory which has never by any treaty been surrendered, which as it is, and has from the time of its discovery, as well as its cession, been known as Canada, must be the territory which was intended by this municipal enactment to form the province of Upper Canada. That being the case (and I think it is the only construction, even in a minute point of view, that can with propriety be given to the statute,) we find that the Dalles are strictly within the province of Upper Canada, consequently out of the jurisdiction of this Court, and the offence charged, if committed at all, is not cognizable under the act upon which the indictment is founded.

I come now to the more broad and liberal interpretation of the act, and I shall, as I apprehend, have no difficulty in shewing that we can not arrive

at any other conclusion. The 14th of the king was evidently intended to provide a temporary government for that part of the newly acquired territory, which stood most in need of it. It was passed at a season of great difficulty, when anxiety and alarm pervaded all classes of society in England relative to the issue of the disputes between the parent state and those of the colonies which she has since acknowledged as the United States of America. At a period when the intercourse between the province and the mother-country was so limited, that it could hardly be said to belong to it, such was the moment in which the act erecting the province of Quebec was passed; an act whose temporary nature may be clearly deduced upon a single reference thereto. This province was to subsist only, by the act of 1774, till the king should see fit to alter its limits. In 1791, the situation of affairs, relative to this portion of the British possessions, was widely different, and the British parliament proceeded to form a people, whose loyalty during a contest which had severed such numerous colonies from the dominion of Britain, had well entitled them to the distinguished and distinguishing privileges secured to them by the munificent act of 1791. Refer to the acts of 1774 and of 1791, and, surveying the difference, is it possible for a moment to imagine that the government of 1791, intended only to legislate for a part of Canada? Is it, I would ask, reasonable to consider that the minister of a great nation, such as England, contemplating an extensive and valuable, though distant territory, belonging alike by conquest and affection to the mother-country, and entitled to protection in time of war from its superior strength, in time of peace from its extensive and unequalled trade. Entitled to receive, and have secured to it, the due adminis-

tration of justice, and the unrestricted enjoyment of religious freedom. Is it, I ask, reasonable to suppose, that from 1763 to 1791, the great men who presided over the councils of Britain intended at that period to propose a government for a part of Canada? To suppose so is to suppose they were sleeping at their post. Can it, I ask, be imagined that a minister could be found so regardless of his duty, so ignorant of the necessities, so insensible to the loyalty, of this country, or so negligent to the interests of his master, as in 1791 to propose a government to a *part* of Canada? We can not suppose it; they have not so neglected us. They have given us a government, and a constitution, superior to any on earth, excepting their own, after which it was modelled. A government, suited to our necessities, and gained by our unshaken and persevering loyalty, when revolution tore our sister provinces from their allegiance, and strove to associate us in the revolt. I ask then, is it for a moment to be believed, that such magnanimity would be tarnished by these advantages being confined to only a part of a people of the same blood, equally brave, loyal, and grateful, and equally standing in need of, and equally entitled to all these privileges? If any should be found disposed to support, by argument, a contrary opinion, they ought to be confident, before they make so heavy a charge as is involved therein, that they can substantiate it beyond the power of contradiction. But there is no occasion to apprehend such an argument, for the proclamation is clear as the noon-day sun upon the subject. It tells us that the act of 1791 has provided a liberal, an equitable, and a permanent government for the brave, the loyal, and grateful, population of an extensive tract of country, within certain latitudes and longitudes, "including all the territory

“ to the westward and southward of a line drawn  
 “ due north from the head of the lake Temisca-  
 “ ming, until it strikes the boundary of Hudson’s  
 “ Bay, to the utmost extent of the country com-  
 “ monly called or known by the name of Canada.”  
 What that country consisted in I have had the  
 honour of submitting to the Court in the early  
 part of the argument I have had the honour of  
 addressing to the Court. In conclusion, I contend,  
 on this part or view of the subject, namely, the  
 broad and liberal construction of the act of 1791,  
 that by Canada must be meant Canada as known  
 to the French, from whom it was taken, and who,  
 in ceding this part of North America to the British  
 Crown in 1763, actually, as a part of Canada,  
 ceded the Dalles. Reverting to the whole ques-  
 tion, I contend, that, whether the act of 1791 is  
 construed according to strict, rigid, municipal  
 rules, or contemplated with a broad, liberal, and  
 statesman-like spirit, the Dalles form a part of his  
 Majesty’s province of Upper Canada, and if the  
 offence has been committed at all, it has been com-  
 mitted out of the jurisdiction of this Court.

*Mr. Valière de St. Réal.*—S’il plait à la cour,  
 j’ai l’honneur de soumettre qu’il me semble que le  
 statut du quatorzième du roi, sur lequel messieurs  
 les avocats de la Couronne comptent, frappe le  
 lecteur immédiatement comme un acte temporaire,  
 et qu’il n’étoit pas destiné à être un statut perma-  
 nent. Il est vrai que par cet acte des limites fu-  
 rent données à l’ancienne province de Québec,  
 mais ces limites dévoient exister seulement pen-  
 dant le plaisir du roi, et son plaisir est clair et  
 connu par l’acte de 1791. Mais l’objection prin-  
 cipale de mes savants confrères, les procureurs de  
 la Couronne à notre construction de cet acte est  
 ceci, que dans le préambule ou titre, on trouve la  
 province de Québec. Mais c’étoit une bonne re-

marque de mon savant confrère Stuart, que le titre d'un acte n'est rien, qu'il est comme le préface d'un livre, mais qu'il faut regarder aux clauses qui ordonnent, pour y trouver son esprit. Nous savons qu'il est nécessaire dans le titre d'un acte de raconter le titre du vieil acte qu'on rédige, et c'est peut-être par cette circonstance que les mots "*la province de Québec*" ont été introduits dans l'acte de 1791. Mais n'importe, il est impossible de regarder la proclamation du roi, son ordre en conseil, autrement que comme donnant "tout le pays à l'ouest d'une ligne tirée nord du haut du lac Temiscaming jusqu'à la ligne bornée de la Baie d'Hudson qui a été connu comme "Canada," à la province du Haut Canada.— Regardons aux limites, et nous verrons que la ligne de division entre les provinces est ceci, savoir "d'une borne en pierre sur le bord nord du lac St. François à la baie ouest de la Pointe au Bodet dans la limite entre la juridiction (township) de Lancaster et la seigneurie de la Nouvelle Longueuil, courant le long de la dite limite dans la direction de nord trente-quatre degrés ouest, jusqu'à l'angle le plus ouest de la dite seigneurie de la Nouvelle Longueuil; de là, le long de la borne nord-ouest de la seigneurie de Vaudreuil, courant nord, vingt-cinq degrés est jusqu'à ce qu'elle tombe sur la rivière des Ottawas, pour monter la dite rivière jusqu'au Lac Temiscaming, et du haut du dit lac par une ligne tirée vrai nord jusqu'à ce qu'elle touche la ligne bornée de la Baie d'Hudson, renfermant tout le territoire à l'ouest et sud de la dite ligne jusqu'à l'étendue la plus reculée du pays communément appelé ou connu sous le nom de Canada." Je remarque que ces limites sont très bien connues et qu'elles étoient aussi bien connues avant la proclamation. Mon savant confrère,

Stuart, à bien expliqué l'étendue de ces limites, et il n'en a pas pris une vue trop large. Les mots de la proclamation sont très remarquables. Après avoir donné les lignes qui séparent la province du Haut Canada de la province du Bas Canada, elle ajoute, "*renfermant*," (une expression très remarquable,) "*renfermant* tout le territoire à l'ouest et sud de la dite ligne," (la ligne tirée vrai nord du haut du Lac Temiscaming jusqu'à ce qu'elle touche la ligne bornée de la Baie d'Hudson) "jusqu'à l'étendue la plus reculée du pays communément appelé ou connu sous le nom de Canada." Regardons ces mots, "l'étendue la plus reculée du pays communément appelé ou connu sous le nom de Canada." Les mots ne sont pas "du pays communément appelé ou connu sous le nom de la province de Québec," non, point de tout, mais ils disent, "sous le nom de *Canada*." La question donc est celle-ci :— Quelle est l'étendue la plus reculée du pays connu comme Canada? L'abbé Raynal dans son Histoire des Indes, parlant de ce pays, au tome 8, livre 17, page 238, dit, "L'année 1764 vit éclore un nouveau système. On demembra de Canada la côte du Labrador qui fut jointe à Terre-Neuve; le lac Champlain et tout l'espace au sud du quarante-cinquième degré de latitude, dont la Nouvelle York fut accrue; l'immense territoire à l'ouest du fort de la Golette, et du lac Nipissim, qui fut laissé sans gouvernement. Le reste sous le nom de province de Québec fut soumis à un chef unique." La description de cet historien respectable du territoire qu'on demembra donne une idée correcte du pays connu comme Canada. Ce système nouveau, dit-il, donna une partie de Canada à Terre-Neuve; par une autre partie, savoir l'espace au sud de quarante-cinq degrés de latitude, la Nouvelle York fut accrue; "l'immense



“territoire à l'ouest du fort de la Golette, et du lac Nipissim, fut laissé sans aucun gouvernement :” (et, comme mon savant confrère Stuart, a bien soutenu, c'est cet immense territoire que la proclamation de l'année 1791 a donné au Haut Canada comme faisant partie du pays “appelé et connu sous le nom de Canada”) pendant que “le reste” (de ce pays connu sous le nom de Canada) “fut soumis, sous le nom de province de Québec à un chef unique.” J'ai l'honneur de soumettre à vos honneurs que, regardant aux mots de la proclamation de 1791 et en les comparant avec cette description de l'abbé Raynal du territoire laissé sans aucun gouvernement, nous le trouverons être le pays que, par cette proclamation, on se proposa de faire une partie du Haut Canada; dans le tems qu'on déclaroit que la ligne seroit “tirée du haut du Lac Temiscaming vrai nord jusqu'à ce qu'elle touche la ligne bornée de la Baie d'Hudson,” (et en outre) renfermant tout le territoire à l'ouest et sud de la dite ligne jusqu'à l'étendue la plus reculée du pays communément appelé ou connu sous le nom de Canada. Ce territoire étoit alors connu sous le nom de Canada; et il est situé à l'ouest de cette ligne là, donc par là il se trouve être une partie du Haut-Canada. Encore, je prie l'attention de la Cour à l'ouvrage de monsieur Pinkerton, un géographe Anglois très connu. Cet auteur distingué, parlant de l'étendue de Canada y donne des grandes limites;<sup>(14)</sup> vol. 3d, page 234, he says,

(14) May it please the Court: I have the honour to submit that it appears to me that the statute of the fourteenth of the king (upon which the Crown officers rely) must instantly strike the reader as being a temporary act, and that it never was intended to be a permanent one. It is true, that boundaries were given by this act to the old province of Quebec, but these boundaries were only to remain during the king's pleasure, and his will is

"this country" (*Canada*,) is computed to extend  
 "from the gulf of St. Lawrence and isle of Anti-  
 "costi in the east, to the lake of Winnipic in the  
 "west, or from longitude  $64^{\circ}$  to  $97^{\circ}$  west from  
 "London; thirty three degrees, which, in that lati-

clearly made known by the act of 1791. But the principal objection which my learned brethren the counsel for the Crown, make to our construction of that act is this, that in the preamble or title to it, the province of Quebec is mentioned. But it was well remarked by my learned brother, Stuart, that the preamble of an act is nothing, that it is like the preface of a book, but that we must look at the enacting clauses, to discover its spirit. We know that it is necessary in the preamble of one act to recite the title of the old act which is amended, and it is, perhaps, to that circumstance that may be ascribed the introduction of the words, "the province of Quebec," in the act of 1791. But that does not signify, it is impossible to consider the proclamation of the king, or his order in council, otherwise than as giving to the province of Upper Canada, "all the country to the west of a line drawn due north from the head of lake Temiscaming to the boundary of Hudson's Bay, which was known as Canada." Let us look at the boundaries, and we shall see that the boundary line between the provinces is this, namely, from "a stone boundary on the north bank of the lake St. Francis, at the cove west of Pointe au Bodet, in the limit between the township of Lancaster, and the seignory of New Longueuil, running along the said limit in the direction of north thirty-four degrees west, to the westernmost angle of the said seignory of New-Longueuil, thence along the north-western boundary of the seignory of Vaudreuil, running north, twenty-five degrees east, until it strikes the Ottawas River, to ascend the said river into the Lake Temiscaming; and from the head of the said lake, by a line drawn due north until it strikes the boundary line of Hudson's Bay, including all the territory to the westward and southward of the said line, to the utmost extent of the country commonly called or known, by the name of Canada." I beg to remark that these limits are very well known, and also that they were well known before the proclamation. My learned brother Stuart, has well explained the extent of these limits, and he has not taken too wide a purview of them. The words of the proclamation are very remarkable. After having described the lines which separated the province of Upper-Canada, from the province of Lower-Canada, it adds, "*including*" (a very remarkable expression) "*including* all the territory to the west and south of the said line," (the line drawn due north from the

"tude, may be about twelve hundred geographical miles. The breadth from the lake of Erie in the south, or latitude  $43^{\circ}$ , may extend to latitude  $49^{\circ}$ , or three hundred and sixty geographical miles, but the medial breadth is not above two

head of Lake Temiscaming, until it strikes the boundary of Hudson's Bay) "to the utmost extent of the country commonly called, or known, by the name of Canada." Let us consider these words, "the utmost extent of the country commonly called, or known, by the name of Canada." The words are not "of the country commonly called, or known, by the name of the province of Quebec;" no, not at all, but they say, "by the name of Canada." The question therefore is, what is the utmost extent of the country known as Canada? The abbé Raynal, in his History of the Indies, speaking of this country, vol. 8. book 17, page 238, says, "the year 1764 beheld the rise of a new system. Canada was dismembered of the coast of Labrador, which was added to Newfoundland; of Lake Champlain, and the whole tract of land to the south of the forty-fifth degree of latitude, with which New-York was augmented; of the immense territory to the westward of Fort Golette and of Lake Nipissim, which was left without a government; and the remainder, under the designation of the province of Quebec, was placed under one governor." The description which this respectable historian here gives of the territory thus dismembered gives a correct idea of the country known as Canada. This new system, he says, gave a part of Canada to Newfoundland. New-York was increased by another part, namely, the tract to the southward of the forty-fifth degree of latitude. "The immense territory to the west of Fort Golette and of Lake Nipissim, was left without any government;" (and, as my learned brother Stuart has well maintained, it is this immense territory which the proclamation of the year 1791, gave to Upper-Canada, as being a part of the country, "called or known by the name of Canada," whilst "the remainder" (to wit, of the country known by the name of Canada) "was placed, under the designation of the province of Quebec, under one governor." I have the honour to submit to your honours that, looking at the words of the proclamation of 1791, and comparing them with this description of the abbé Raynal of the territory left without any government, we shall find it to be the country which, by this proclamation it was proposed to make a part of Upper Canada, at the time when it was declared that the line should be "drawn from the head of the lake Temiscaming due north until it strikes the boundary line of Hudson's Bay" (and moreover)

"hundred." So far he speaks of the absolute geographical extent of Canada, the subsequent observation, which he makes relative to the original population of the country, strongly supports the argument which we have the honour to submit to the Court, viz.—that this country, described by the abbé Raynal, as "*l'immense territoire qui fut laissé sans aucun gouvernement,*" is the very country intended by the proclamation of 1791 to receive a government, and become a part of Upper Canada. "The original population," (says Mr. Pinkerton,) "consisted of several Savage tribes whose names and manners may be traced in the early French accounts, which may also be consulted for the progressive discovery, the first settlement being at Quebec in 1608.—During a century and a half that the French possessed Canada, they made many discoveries towards the west, and Lahontan, in the end of the seventeenth century, has given a tolerable account of some lakes beyond that called Superior, and of the River Missouri. Quebec being conquered by Wolfe in 1759, Canada was ceded to Great Britain by the treaty of Paris in 1763."—*Donc je soumets avec confiance, que ce territoire à l'ouest qui a été découvert par les François et décrit par Lahontan, et d'autres auteurs, sous le nom de Canada, est véritablement devenu une partie du Haut Canada selon la proclamation de 1791,*

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"including all the territory to the westward and southward of the said line to the utmost extent of the country commonly called or known by the name of Canada." This territory was then known by the name of Canada, and it is situated to the westward of that line, and therefore it proves to be a part of Upper Canada. Again, I beg the attention of the Court to the work of Mr. Pinkerton, a well known English Geographer. This distinguished author, speaking of the extent of Canada, gives very large bounds to it.

et conséquemment qu'il ne fait pas une partie du territoire Sauvage, ni n'est sous la juridiction de cette Cour. L'abbé Raynal et monsieur Pinkerton s'accordent dans leur description des limites Ouest du pays connu sous le nom de Canada, et pour la limite sud du Canada regardons encore à l'ouvrage de l'abbé Raynal. Cet auteur, parlant dans le même tome de son Histoire des Indes, de l'étendue, sol, et climat, de la Louysiane, dit, (livre 16, p. 111.) " La Louysiane est une vaste contrée, bornée au midi par la mer, au levant par la Floride et la Caroline, au couchant par le Nouveau Mexique, et au nord par le Canada, et par des terres inconnues, qui devoient s'étendre jusqu'à la Baie d'Hudson. Il n'est pas possible de fixer sa longueur avec précision, mais sa largeur commune est de deux cent lieues." Ici nous voyons que la limite nord de la Louysiane est le Canada et des terres inconnues qui devoient s'étendre jusqu'à la Baie d'Hudson. Avec la proclamation de l'année 1791 sous nos yeux, laquelle nous dit que les limites du Haut Canada renferment tout le territoire à l'ouest et au sud connu sous le nom de Canada jusqu'à l'étendue la plus reculée de ce pays, il est impossible de dire que ce pays là, qui borne la Louysiane au nord, selon l'abbé Raynal, ne fait pas, suivant cette proclamation, dans ce moment, une partie du Haut-Canada. Le pays connu comme Canada s'étend au sud jusqu'à la Louysiane, et à l'ouest jusqu'au quarante-deuxième degré de longitude. Il reste à présent à considérer la limite nord du Canada, et ici nous n'avons par la même certitude. Dans les cartes de la nouvelle France certainement toute la rivière Winnipic y est renfermée, et la ligne de la limite au nord est tirée d'après l'interprétation des limites du Canada que nous avons soumis à la Cour. Que cette interprétation est une interpré-

tation correcte et qu'elle s'accorde effectivement avec les limites du Canada, comme elles étoient connues au gouvernement François, je prendrai la liberté de prier l'attention de la Cour à ce que nous considérons comme une autorité très forte. C'est un acte de monsieur le Duc de Ventadour, daté de 1625, et se trouve dans "les Edits et Ordonnances," tome 2a. page 11, sous le titre de "Commission de Commandant en la Nouvelle France du 15 Février 1625, par M. le Duc de Ventadour, qui en étoit viceroy, en faveur du sieur de Champlain." Cet instrument commence par un récit d'autres lettres de commission par lui obtenues, et procède, dans la douzième page, à déclarer d'une manière la plus précise, la vue qu'avoit prise le gouvernement de France de l'étendue de cette partie de leurs possessions; et il soutiendra toujours que tout le territoire qui les François ont connu comme étant appelé par le nom de Canada au sud et à l'ouest de la ligne se fréquemment mentionnée dans mon discours, se trouve être ordonné, par la proclamation du Roi de 1791, de faire, et se trouvera faire actuellement, partie de sa province du Haut Canada "jusqu'à l'étendue la plus reculée" de ce pays là. Regardons cet acte, et nous verrons par là, que des pouvoirs les plus étendus ont été donnés au sieur De Champlain, des pouvoirs lesquels aussi, il faut se souvenir, n'avoient pas dans le tems excité aucun doute de la prerogative de France de les donner, ni aucun empêchement de la part d'aucune autre nation. Cette commission en premier lieu, ordonne et députe, "le sieur De Champlain notre lieutenant, pour représenter notre personne au dit pays de la Nouvelle France, et pour cet effet lui avons ordonné d'aller se loger, avec tous ses gens, au lieu de Québec étant dedans le fleuve St. Laurent, autrement appelé la grande rivière de Canada, au dit

"pays de la Nouvelle France." A présent nous  
 verrons les pouvoirs qui ont été donnés par cette  
 commission. "Et au dit lieu, et autres endroits,  
 "que le dit sieur De Champlain avisera bon être,  
 "faire construire et bâtir tels forts et fortresses  
 "qui lui sera besoin et nécessaire pour la conser-  
 "vation de ses gens, lequel fort ou forts il nous  
 "gardera à son pouvoir pour, au dit lieu de Qué-  
 "bec et autres lieux et endroits en l'étendue de  
 "notre dit pouvoir, tant et si avant que faire se-  
 "pourra, établir, étendre, et faire connoître, le  
 "nom, puissance, et autorité, de sa Majesté, et  
 "en icelle assujettir, soumettre, et faire obéir, tous  
 "les peuples de la dite terre, et les circonvoy-  
 "sins, et par le moyen de ce, et de toutes  
 "autres voies licites, les appeler, faire instruire,  
 "provoquer, et émouvoir, à la connoissance et  
 "service de Dieu et la religion Catholique, Apos-  
 "tolique et Romaine : la y établir, et en l'exercice  
 "et profession d'icelle, maintenir, garder, et con-  
 "server les dits lieux sous l'obéissance et autorité  
 "de sa dite Majesté ; et pour y avoir égard et va-  
 "quer avec plus d'assurance, nous avons en vertu  
 "de notre pouvoir, permis au dit Sieur de Cham-  
 "plain, commettre, établir et substituer, tels ca-  
 "pitaines et lieutenants pour nous que besoin  
 "sera, et pareillement commettre des officiers pour  
 "la distribution de la justice, et entretien de la  
 "police, reglemens, et ordonnances, jusqu'à ce  
 "que par nous autrement en ait été pourvu ; trai-  
 "ter, contracter, à même effet, paix, alliances,  
 "confédérations, bonne amitié, correspondance,  
 "et communication, avec les dits peuples et leurs  
 "princes, ou autre ayant commandement sur eux,  
 "entretenir, garder, et soigneusement conserver,  
 "les traités et alliances dont il conviendra avec  
 "eux, pourvu qu'ils y satisfassent de leur part ; et  
 "à leur défaut leur faire guerre ouverte pour les

" contraindre, et amener à telle raison qu'il jugera  
 " nécessaire pour l'honneur, obéissance, et service  
 " de Dieu, et l'établissement; manutention, et con-  
 " servation, de l'autorité de sa dite Majesté parmi  
 " eux; du moins, pour vivre, hanter, et fréquenter  
 " avec eux, en toute assurance, liberté, fréquen-  
 " tation, et communication, y négocier et trafiquer  
 " amiablement et paisiblement, faire faire à cette  
 " fin les découvertes des dites terres, et notamment  
 " depuis le dit lieu de Québec, jusques et si avant  
 " qu'il se pourra étendre audessus d'icelui, dedans  
 " les terres et rivières qui se déchargent dedans le  
 " dit fleuve Saint Laurent, pour essayer à trouver  
 " le chemin facile pour aller, par dedans le dit  
 " pays, au Royaume de la Chine, et Indes Orien-  
 " tales;" Ici, s'il plait à vos honneurs, nous voyons  
 des pouvoirs les plus étendus donnés par le gou-  
 vernement de France pour tous les objets qui pour-  
 roient demander son attention, pour la paix, et  
 pour la guerre, pour faire connoître le nom, puis-  
 sance, et autorité, de sa Majesté, le Roi de France,  
 par dessus un pays, les limites duquel n'étoient pas  
 connues exactement à eux-mêmes, pour faire éta-  
 blir la religion, pour commettre et établir pareille-  
 ment des officiers militaires et civiles, pour traiter  
 et contracter paix, alliance, et bonne amitié, avec  
 d'autres peuples et leurs princes, et à leur défaut,  
 leur faire guerre ouverte; enfin des pouvoirs  
 sont donnés par cette commission qui ne l'au-  
 roient été, excepté par un gouvernement qui pos-  
 sédoit le droit de les donner selon les loix des na-  
 tions. Ces pouvoirs s'étendent dedans toutes les  
 terres et rivières qui se déchargent dedans le fleuve  
 Saint Laurent; assurément la rivière Winnipic ne se  
 décharge pas dedans ce fleuve, mais par les vieilles  
 cartes, cette rivière est dedans le pays connu aux  
 François comme Canada. Après cette preuve de  
 ce que étoit considéré dans le tems comme les ter-



ritoires de France par elle-même, il est seulement nécessaire de voir si la possession en étoit actuellement tenue par ce royaume. L'espèce de possession, que les loix des nations admettent comme preuve de la souveraineté actuelle, paroîtra également soutenue. Par cette commission nous voyons que le pouvoir est donné de faire, construire, et bâtir, tels forts et fortresses qu'à lui, (le Sieur de Champlain,) seroit besoin et nécessaire; des forts et fortresses ont été construits et à ce jour il y a des reliques de forts François qui restent dans ces pays, et qui prouvent incontestablement une possession actuelle. Nous avançons donc à présent cette position, que, ni dans le tems de la possession actuelle de ce pays par les François, ni depuis la conquête par les Anglois, ont les limites de Canada été définies avec exactitude. En appuyant cette position (qui est particulièrement vraie, en regard de la limite au nord,) je soumets, que Charlevoix, l'abbé Raynal, monsieur Pinkerton, et tous les auteurs, s'accordent, et représentent que les limites de Canada, sous le régime de France, n'étoient pas absolument fixées ou connues. Comme une autorité pour dire qu'elles ne sont pas fixées au moment actuel, je produis la topographie de monsieur Bouchette l'arpenteur general de cette province, qui a donné beaucoup d'attention à tout ce qui est intéressant concernant ce sujet, et comme l'officier principal de la province dans son département, je me flatte que son ouvrage doit être estimé une autorité très forte. Monsieur Bouchette, parlant du Haut Canada dit, page 610 de sa Topographie, "Il n'y a point eu des bornes fixées." Je prie l'attention particulière de la Cour à l'expression, "Il n'y a point eu des bornes fixées à l'ouest et au nord-ouest, c'est pourquoi on peut supposer qu'elle" (la province du Haut Canada,) "couvre les vastes regions qui s'étendoit vers l'o-

"cean Pacifique et la mer du Nord. Les bornes  
 "qui la séparent des Etats Unis sont si incertaines,  
 "et si mal établies, et ont été la source féconde de  
 "tant de querelles entre les deux puissances,  
 "qu'elles ont demandé depuis long tems la révi-  
 "sion qu'on en va faire incessamment, en exécution  
 "des quatrième et cinquième articles du traité de  
 "paix de 1815." Ici nous avons la déclaration de  
 monsieur l'arpenteur général de cette province,  
 qu'il n'y a point eu des bornes fixées à l'ouest et  
 au nord-ouest de ce pays qu'on appelle Canada.  
 Monsieur Bouchette parle de la proclamation de  
 1791, mais celle-ci est son opinion. Dans le cas,  
 où il ne se trouve pas de limites précises fixées, il  
 faut nous informer comment ceux qui vivoient alors  
 et qui eurent connoissance du pays, comment les  
 géographes de ces jours, ont compris le sujet. Re-  
 gardons donc aux cartes géographiques, et nous  
 trouverons que la Rivière Winnipic en son entier  
 est peint comme appartenante au Canada.—  
 Quand monsieur Bouchette, parlant de ce pays  
 dans sa Topographie, a dit qu'il n'y a point des  
 bornes fixées et ajoute, "c'est pourquoi on peut  
 "supposer qu'elle couvre les vastes regions qui  
 "s'étendent vers l'océan Pacifique," il est bien  
 certain, à ce que me paroît, qu'il parle de la pro-  
 clamation de 1791, qui donne tout le pays, ("jus-  
 "qu'à l'étendue la plus réculée,") communément  
 appelé ou connu sous le nom de Canada, à la pro-  
 vince du Haut Canada. Les territoires Sauvages  
 sont au nord de la ligne tirée comme susdit, par-  
 ceque tout le pays au sud et à l'ouest se trouve  
 dans le Haut Canada. La seule chose à consi-  
 derer me semble celle-ci; que la proclamation de  
 1791, ne donna pas les bornes de la province de  
 Québec comme les limites des deux provinces,  
 mais que, dans les mots actuels de la proclamation,  
 les limites du Haut Canada, s'étendent d'un côté

“du haut du Lac Temiscaming, par une ligne  
 “tirée vrai nord jusqu’à ce qu’elle touche la  
 “ligne bornée de la Baie d’Hudson, renfermant  
 “tout le territoire à l’ouest et sud de la dite  
 “ligne, jusqu’à l’étendue la plus reculée du pays  
 “communément appelé ou connu sous le nom de  
 “Canada.”

Par le Fort Bourbon et le Fort Dauphin, et plusieurs autres circonstances, il est aussi bien certain que ce pays, où les Dalles se trouvent, étoit possédé par les François, et, comme nous disons, et comme j’espère, nous avons prouvé par les cartes et par les auteurs de grandes lumières, (avec lesquels monsieur l’arpenteur général de cette province s’accorde,) que ce pays au sud et à l’ouest étoit appelé et connu sous le nom de Canada. Enfin, je dis que les François ont connu ce pays comme Canada, et qu’il n’y a rien au contraire qu’on pourroit produire, et de plus si nous ne produisons pas de preuve absolue que les Dalles sont dedans les bornes du Haut Canada, nous avons prouvé qu’il n’y a point eu de bornes fixées, et par la même autorité (une autorité bien en droit d’être respectée à cause du charge que remplit son auteur,) qu’on considèroit qu’elle couvre les vastes regions à l’ouest et au nord. C’est à vos honneurs à dire, par votre decision, si les Dalles se trouvent y dedans.<sup>(15)</sup>

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(15) I therefore confidently submit that this western territory, which had been discovered by the French, and is described by Lahontan, and other writers, under the name of Canada, became in reality a part of Upper Canada by the proclamation of 1791, and consequently does not form a part of the Indian territory, nor is it within the jurisdiction of this Court. The abbé Raynal and Mr. Pinkerton agree in their description of the western boundary of the country known by the name of Canada, and for the southern boundary of Canada, let us again look at the abbé Raynal’s work. This writer, in the same volume of his History of the Indies, treating of the extent, soil and climate of Louysi-

*Attorney-General.*—The point before the Court appears to me to be so clear that it is almost unnecessary to argue it; a great deal of learning has been produced, and much ingenuity exercised, by my learned friends to prove the point with

ana, says, (book 16, page 111.) "Louysiana is a vast country, bounded on the south by the sea, on the east by Florida and Carolina, on the west by New Mexico, and on the north by Canada, and by unknown lands, which may extend to Hudson's Bay. It is not possible to fix its length with precision, but its medium breadth is two hundred leagues." Here we see that the northern limit of Louysiana is Canada and unknown lands which may extend to Hudson's Bay. With the proclamation of 1791 before our eyes, which tells us that the boundaries of Upper Canada include the whole of the country to the west and south known under the name of Canada, to the utmost extent of that country, it is impossible to say but that that country which bounds Louysiana to the northward, according to the abbé Raynal, must at this moment form, in conformity with that proclamation, a part of Upper Canada. The country known as Canada extends to the south as far as Louysiana, and to the west as far as the ninety-seventh degree of longitude. There remains now for us to consider the northern limits of Canada, and here we have not the same certainty. In the maps of New France it is true that the whole of the river Winnipic is included in it, and the northern boundary line is drawn in conformity with the interpretation of the limits of Canada which we have submitted to the Court. To prove that this interpretation is a correct one, and that it in effect agrees with the limits of Canada as they were known to the French government, I will take the liberty of praying the attention of the Court to what we look upon as very strong authority. It is an act of the Duke of Ventadour, dated in 1625, and will be found in the "Edicts and Ordinances," vol. 2, page 11, under the title of "Commission of Commandant in New France of the 15th February, 1625, by his grace the Duke of Ventadour, who was viceroy of the country, in favour of the sieur de Champlain." This instrument begins by reciting other patents of commission obtained by him, and proceeds, in the twelfth page, to declare, in the most precise manner, the view taken by the government of France of the extent of this part of their possessions; this instrument will support the position that the territory which the French knew as being called by the name of Canada, to the south and west of the line so frequently mentioned in the course of my speech, proves to be ordered, by the king's proclamation of 1791, to make, and that it will be.

which they set out, viz :—that if the offence alleged in the indictment to have been perpetrated and that by the prisoner at the bar, has been committed at all, it must have been in the province of Upper Canada, and consequently out of the

found actually to make, part of his province of Upper Canada, "as far as the utmost extent of that country." Let us look at this act, and we shall perceive from it, that the most extended powers were given to the sieur De Champlain, powers which, it must also be maintained, did not at the time awaken any doubts as to the right which France had to grant them, nor any impediment to their exercise, on the part of any other nation. This commission, in the first place, ordains and deposes, "the sieur De Champlain our lieutenant, to represent our person in the country of New France, and to that effect, we have ordered him to go and reside, with all his people, at the place called Quebec, being within the river St. Lawrence, otherwise called the great river of Canada, in the said country of New France." Now we will look at the powers which were granted by this commission, "and in the said place, and in other places which the said sieur De Champlain may think fit, to cause to be erected and built such forts and fortresses as may be wanted and necessary to him, for the preservation of his people, which fort or forts he shall keep for us in his power, in order, at the said place of Quebec, and other places and stations within the extent of our said power, (vice-royalty) as much and as far as may be, to establish, extend, and make known, the name, power, and authority of his Majesty, and in the premises, to conquer, subject, and bring to obedience all the people of the said country, and of the circumjacent countries, and by means thereof, and of other lawful means, to call them, cause them to be instructed, excited, and moved, towards the knowledge and service of God, and of the catholic, apostolic, and Roman religion: to establish it there, and in the exercise and profession thereof, to maintain, guard, and keep, the said places under the obedience and authority of his said Majesty; and in order to have regard thereunto, and more surely to fulfil the same, we have in virtue of our said authority (vice-regal) permitted to the said sieur De Champlain, to commission, appoint, and substitute, such captains and lieutenants for us, as need may be, and in the like manner to commission officers for the distribution of justice; and the observance of the police, regulations, and ordinances, until by us otherwise may be provided; to treat for, and contract, to the same effect, peace, alliances, confederations, good friend-

jurisdiction of this Court. In support of this position a variety of arguments have been resorted to, and numerous authors have been referred to; fortunately for us, standing in a Court of law, there is positive law upon the subject, there is

“ship, correspondence, and communication, with the said people, and their princes, or others having the command over them; to maintain, observe, and carefully keep the treaties and alliances which he may enter into with them, provided that they fulfil the same on their parts, and in default thereof, to make open war upon them to constrain them, and bring them to such terms as he shall deem requisite for the honour, the obedience, and the service of God, and the establishment, maintenance, and preservation, of the authority of his said Majesty amongst them; at least, to reside amongst, haunt, and frequent them, in all safety, freedom, frequentation, communication, to trade and traffic, amicably and peaceably, for that purpose to cause to be made discoveries in the said countries, and specially from the said place of Quebec, until as far as he may be able to penetrate beyond the same, within the lands and rivers which discharge themselves into the river St. Lawrence, in order to endeavour to discover a convenient way to go through the said country, unto the kingdom of China, and the East Indies.” Here, may it please your honours, we behold powers the most extensive, granted by the government of France for all the objects which might require attention, to make peace and war, to spread the name, power, and authority of the king of France over a country, the bounds of which were not exactly known to themselves, to establish religion, to commission, and in the like manner establish, military and civil officers, to treat for, and contract, peace, alliances, and good friendship, with other nations and their princes, and on their being in default thereof, to wage open war against them; in fine, powers are granted by this commission which would not have been granted unless by a government which, by the law of nations, was entitled to grant them. These powers extend over all the lands and rivers which discharge themselves into the river St. Lawrence; assuredly the river Winnipic does not discharge itself into that river, but, by the old maps, that river (Winnipic) is situated within the country known to the French as Canada. After this proof of what was, at the time, considered as the territories of France by herself, it is only necessary to enquire whether the possession thereof was actually held by that kingdom. The species of possession which the law of nations admits as a proof of actual sovereignty, will equally appear to

therefore no occasion to have resource to the abbé Raynal, or to Charlevoix, or any other of the speculative writers (writers at the same time for whom I entertain great respect) to whom my learned friend, who last addressed the Court, has referred as furnishing authorities upon the question. It is

be maintained. We see that by this commission power is given to cause to be erected and built such forts and fortresses as may be wanting and necessary to him, the sieur de Champlain; now, forts and fortresses were erected, and to this day there are ruins of French forts remaining in that country, which incontestably prove actual possession. We therefore now take up this position, that, neither at the time of the actual possession of the country by the French, nor since its conquest by the English, have the boundaries of Canada been actually defined. In support of this position, which is especially true as regards the northern limits, I submit that Charlevoix, the abbé Raynal, Mr. Pinkerton, and all authors, agree in representing that the boundaries of Canada, under the French regime, were not positively fixed or known. As an authority for saying that they are not fixed even at the present time, I produce the topography of Mr. Bouchette, the surveyor-general of this province, who has bestowed great attention to every thing that is interesting on this subject. I flatter myself that his work must be esteemed very strong authority. Mr. Bouchette, speaking of Upper Canada, says, page 590 of his topography, "On the west and north west no limits have been assigned to it." I pray the particular attention of the Court to the expression, "no limits have been assigned to it, therefore it may be supposed to extend over the vast region that spreads towards the Pacific and the Northern Oceans. The separation between it and the United States is so vague and ill-defined, and the prolific source of so many disagreements between the two powers, that it has long called for the revision which is now about to be performed, in fulfilment of the fourth and fifth articles of the treaty of peace of 1815." Here we have the declaration of the surveyor-general of this province, that on the west and north-west no limits have been assigned to the country called Canada. Mr. Bouchette speaks of the proclamation of 1791, but this is his opinion. In case there are no precise limits fixed, we must enquire how those who were contemporaries, and who had a knowledge of the country, how the geographers of those days, understood the matter. Let us look at the maps, and we shall find that the whole of the river Winnipic is delineated as belonging to Canada. When Mr. Bouchette, speaking of this country in his 'To-

our advantage that, in this case, without referring to authors who, however respectable they may be, were exposed to the too common failing of endeavouring to secure the favour of their respective governments. I do not intend to throw the slightest imputation on the veracity of the very eminent writers whose opinions and works have been, with so much ability, brought forward, but merely to state that reference to them is com-

pography, says, that it has no limits assigned to it, and adds; "therefore it may be supposed to extend over the vast regions that spread towards the Pacific and the Northern Oceans;" it is very certain, as it appears to me, that he alludes to the proclamation of 1791, which bestows the whole country, to its utmost extent, commonly called or known by the name of Canada, upon the province of Upper Canada. The Indian territories are to the north of a line drawn as above, because the whole of the country to the south and to the west, is within Upper Canada. The only point to consider seems to me to be this; that the proclamation of 1791 did not give the boundary of the province of Quebec, for the limits of the two provinces, but that, in the actual words of the proclamation, the limits of Upper Canada extend on one side "from the head of the lake Temiscaming, by a line drawn due north until it strikes the boundary line of Hudson's Bay, including all the territory to the westward and southward of the said line, to the utmost extent of the country commonly called or known by the name of Canada."

By Fort Bourbon, and Fort Dauphin, and by many other circumstances, it is also beyond a doubt, that the country where the Dalles are situated, was in possession of the French, and, as we say, and as, I hope, we have proved by the maps and by enlightened authors, (with whom the surveyor-general of this province agrees,) that the country to the southward and westward was called and known by the name of Canada. In conclusion, I say, that the French knew the country as Canada, and that nothing to the contrary can be brought forward; and moreover, that if we do not produce positive evidence that the Dalles are within the limits of Upper Canada, we have proved that no fixed limits have been assigned to it, and by the same authority (an authority well entitled to respect on account of the official situation held by the writer) that it is considered to extend over the vast regions to the west and north. It is for your honours to decide whether the Dalles are within it or not.



pletely unnecessary, as we have positive acts of the British parliament to guide both the examination and decision of the question. But we do not differ at all with our learned friends as to the extent of territory formerly claimed by the French, and which undoubtedly came into the possession of the British Crown at the treaty of Paris of 1763, but all we submit to the Court is, that the whole of the French possessions did not constitute Canada, but that the country known by the name of Canada, was much more circumscribed in its extent than my learned friends have described (and I doubt not very accurately too) the old French possessions to have been. The argument of my learned friend who opened this question, is that in construing this and every other act of parliament we should proceed in a liberal and statesman-like manner to apply its provisions. If we trace the movements of the British government, we shall see the impossibility of that construction which my learned friends contend for being admitted to be correct. In 1760 these colonies were conquered, and capitulated to the British forces. By the treaty of Paris in 1763 the whole of the conquest was finally ceded to his Majesty. In 1763 a part of this conquest was, by proclamation, erected into a province, denominated the province of Quebec. By the act of 1774 the province of Quebec was enlarged. By the treaty of peace with the United States of America, the situation and boundaries between the late colonies and the province of Quebec, and others of his Majesty's dominions in North America, were clearly defined, and in 1791, this series of legislative and diplomatic measures were completed by his Majesty dividing his then province of Quebec into his two provinces of Upper and Lower Canada. Let us, for a moment, look at what the act

of 1791 proposed to effect, and every thing like difficulty disappears in a moment. It was to divide a large province, namely that of Québec, into two small ones, to be called Upper-Canada and Lower-Canada, and consequently the boundaries of these two provinces could only be commensurate to that of Québec, and Upper Canada must be a part of the former province, and of that only, otherwise the act, instead of being an act to divide the province of Québec, ought to have been denominated an act to enlarge its boundaries, and, from its extended limits, to form the two provinces therein created. The error of my learned friend is this, that because Canada happens to be mentioned, therefore the avowed object of the act, namely, that of dividing the province of Québec, must be abandoned, or give place to what my learned friend calls the broad and enlightened policy of providing a government for the whole of his Majesty's dominions in North America. I again take up the act, and looking at its title, I find it to be an act to repeal certain parts of an act passed in the fourteenth year of his Majesty's reign, intituled an act for making more effectual provision for the government of the province of Québec in North America. What the province of Québec comprehended is as well known as the limits of this room; the act of the 14th of the king, commonly called the Québec act, defines them precisely, and how then did this act of 1791 amend that of 1774? Why, his Majesty, having been pleased to signify, by message to both houses of parliament, his royal intention to divide his province of Québec into two provinces, it was enacted, by this statute, that it should be so divided, and the two provinces should be created. If my learned friend's observations are correct, then the 14th of the king amounts to nothing, because, though the act of 1791

is professedly an act to amend, not to repeal, that of 1774, still it is indispensable to a correct interpretation of the act to divide the province of Québec, (according to my learned friend's doctrine,) that you add a very considerable territory to it, a mode of division, I confess, I am not acquainted with. The act, being to divide the province of Québec, I contend that the limits of the two provinces must be found in those which constituted the province out of which they were formed, and that, whilst on the one hand, they must together be commensurate to those limits, so on the other, they can not exceed them. That more can not be included in the two than in the one province, and that being the case, that the province of Upper Canada can consist only of that part of the former province of Québec which does not form the province of Lower Canada. This proposition I consider so clear, that a province, any more than any thing else, can not comprehend or contain more, when divided into two parts, than it did when a whole, that I should feel myself very unjustifiably taking up the time of the Court, were I to pursue the argument farther. If any other construction is to be given to the act, then the 14th of the king, defining the province of Québec, amounts to nothing, and the act of the 31st, instead of being an act to divide, would in reality be an act to enlarge, the province of Québec, under the new titles of Upper and Lower Canada.

*Solicitor General.*—I consider the point so extremely plain, that it is not only wasting, but almost trifling with, the time of the Court, seriously to argue whether the division of a province into two parts can, by any possibility, be construed to mean the addition thereto of a vast and almost (according as my learned friends contend) immeasurable territory. In support of this, appa-

rently most novel and extraordinary, proposition, my learned friend, Stuart, contends that the expression in the designation of the boundaries, "the country commonly called or known by the name of Canada," is conclusive that it was in this manner that his Majesty intended to divide the province of Quebec. The enquiry, and the only enquiry, upon the subject appears to me to be one extremely easy of decision. It is simply, whether that one sentence is to preclude or set aside the whole of the first clause of the act in which the intention of his Majesty and of parliament is so clearly expressed. The act of 1791, after reciting the title of the 14th of the king, assigns the reason which induced the legislature to pass the act for the internal regulation of the two separate provinces, which his Majesty had signified his royal intention of forming, by the division of his then province of Quebec, namely, "that the said act, is in many respects, inapplicable to the present condition and circumstances of the said province, and that it was expedient and necessary that a further provision should now be made for the good government and prosperity thereof." It is not said that it is necessary or expedient to enlarge the said province of Quebec, but that further provision should be made for the good government thereof. Of it, as it thus stood, of that province which had, by proclamation, been created in 1763, and whose limits had been extended to what they then were by the act of the 14th of the king, commonly called the Quebec act. My learned friend must most surely be driven to the last stage of despair, when he sets up a loose expression in a declaratory act, which he well knows is the weakest of all acts of the Crown, in affording a just ground or foundation for such an opinion. I know that it is not to the preamble of an act of parlia-

ment that we generally most look for a clear exposition of its objects, but, whilst I admit the correctness of that position, I would also remind my learned friend that there is a wide difference between the enacting and declaratory clauses of a statute, and that we ought not to set aside the obvious meaning, and overturn the avowed intention of an act of parliament, because of a loose expression in a declaratory clause. I can not think so meanly of the whole French nation as to suppose they ever claimed these territories and wildernesses, as belonging to, or forming a part of, Canada. As to the authorities my learned friend, who spoke second, has advanced, they can not, in a Court of law, be styled authorities. I have a very great respect for the abbé Raynal, but his work is merely speculative and philosophical, and is no geographical authority upon a question of territory; the same remark will apply to Pinkerton, we all esteem it as a very useful work, but it forms no geographical authority in a Court.— Upon the whole I contend with the Attorney-General that the former province of Quebec must be found in the provinces of Upper and Lower Canada, and that no more can be included in them than what was contained in that province, for the act by which they were erected into provinces was nothing more but an act to divide it into two parts, hereafter to be designated Upper and Lower Canada. Again, the learned gentlemen say, that all to the south and west of this line, from Temiscaming lake to Hudson's Bay, must be esteemed Canada, what then was the use of this act of the 43d of the king? The legislature, if my learned friend's argument was correct, were idly passing an act that could have no object. Instead of Indian territories it is all Upper Canada, according to my learned friend's statement. But it is a position

completely untenable for a moment. Upper Canada extends no farther south and west than the province of Quebec did, any more than does Lower Canada to the north and east. In the two provinces are now to be found that which, before the separation, constituted the province of Quebec, and Upper Canada consists of that part, and of that part thereof only, which is south and west of the province of Lower Canada. I refrain from enlarging, confident that, in the view we take of the subject, we are correctly construing the intention of the legislature, and that we shall have our own opinion strengthened and confirmed by your honours decision.

*Mr. Stuart.*—I confess I look in vain for those grounds of confidence on which my learned friends rely. If supporting their opinions by confident assertions entitle them to expect the result they anticipate, they have certainly gone a good way towards obtaining it, but I look in vain for any thing that can be called argument, upon the question that is now before the Court, in the observations that have been submitted by the officers of the Crown. If there was any thing that demanded attention, it was the remark of my learned friend, the Solicitor General, on the act of the 43d of the king, but in that the learned gentleman has made a mistake, for, if my learned friend referred to the chart, he would perceive that nine tenths of the whole Indian territories, according to the description of them, lie beyond the boundary which we claim as that given to Upper Canada by the act of 1791. If my learned friend traced the parallel of 52°, he would perceive that nearly the whole of the North West Company's stations, and the whole of those of the Hudson's Bay Company, are to the north of that line. Then surely it is obvious that this was not an act without an object. It was

an act to extend the jurisdiction of the provincial Courts to the trial and punishment of offences committed in the Indian territories, and they are to be found in the immense and almost boundless wilderness to the north and west of the province of Upper Canada, as established by the act of 1791. The act of the 14th of the king was obviously temporary, the proclamation of 1791, defining the boundaries of the two provinces, and which, I must confess, I was extremely surprised to hear so slightly spoken of by the Crown officers, was founded upon an act of a very different description. The former was merely a temporary, whilst this was a permanent, act.

*Mr. Justice Bowen.*—From what part of the act of 1774, do you conclude that it was only a temporary act. I see no part of it that warrants such a conclusion, except with reference to the last clause.

*Mr. Stuart.*—The words there made use of are general, and, as I conceive, must be understood to refer to the whole of the act. I mean, however, independently to contend that the time at which that act was passed, and the situation of England with reference to her American colonies, concur to shew that this act was merely temporary. But it is needless to refer to the act of 1774, as it does not bear upon the case, being completely done away by the broad and liberal proclamation of 1791. That proclamation created two provinces. I am surprised that the Crown officers should treat so lightly his Majesty's proclamation, it is certainly not the quarter from which we should expect it. How was the province of Quebec created? By proclamation; and surely my learned friends will allow as much weight to one of his Majesty's proclamations as to another. They will not deny the same power to his Majesty in 1791

which he exercised in 1765. If proclamations are such weak acts, what are we to think of the proclamation that has been put in evidence on the present trial, and has been resorted to upon all occasions as the justification for all the apparent aggressions which have marked the progress of these unfortunate disputes? But I differ in opinion with my learned friends on that point; if in 1763 his Majesty could create a province by proclamation, he, in 1791, could divide and enlarge a province in the same way. This he has been pleased to do, and all we have to do with this expression of the royal will and pleasure is, to adopt it, as the rule by which we are to be governed, in considering and deciding the question of jurisdiction now before the Court, and we contend that, looking at this proclamation, it is impossible to say that this offence, if committed at all, was committed within the jurisdiction of this Court, being perpetrated at the Dalles, which form a part of his Majesty's province of Upper Canada, as created by his royal proclamation of 1791.

*It being now past six o'clock, the Court was adjourned till Friday morning at eight o'clock, A. M.*

*Friday, 29th May, 1818.*

PRESENT AS BEFORE.

*The Court having assembled, the jury were called over and being all present.*

*Chief Justice Sewell.*—The Court are most distinctly of opinion, on referring both to the act of 1791 and that of 1774, that the argument on the defence must fail. What was the object of each act? Amongst others, that of 1774 was to enlarge the province of Quebec, which had been created



in 1763. That of 1791 was to separate or divide the province of Quebec into two provinces, to be denominated Upper and Lower Canada, and make each respectively independent of the other, by giving a legislature to each respectively, but still retaining between or within the two provinces, the same extent of country, the same space, as the one province contained. What is the act? What is its object, its avowed object? To repeal certain parts of the act of 1774; and what is the part repealed? It is that part of it which gives authority to the council of the province of Quebec, and what is the reason assigned for so doing?—Why, that his Majesty had signified it to be his royal will and pleasure to divide his province of Quebec. To assert that he intended by this, that the limits of the province should be extended by the separation, appears to me repugnant to the plainest principles of common sense, and, therefore, I can not assent to it. The short history of the act of 1791 is briefly this. The king signifies to parliament his royal intention of dividing his province of Quebec, and he calls on the legislature to provide for this alteration by granting an act adapted to the change. The legislature pass an act providing for the due government of the two provinces, and under the authority of this act, and the royal proclamation, the province of Quebec was accordingly divided, the royal proclamation being an exercise of sovereign authority, his Majesty in that act, by and with the consent of his privy council, declared what shall be the line of separation between Upper and Lower Canada, and how much of the former province of Quebec shall belong to the one, and how much to the other. The object of the act, and the object of the royal proclamation, are so clearly expressed, that we can not, for a moment, doubt upon the

subject. What says the act? "His Majesty having been pleased to signify his royal will and pleasure to separate and divide the province of Quebec." What says the proclamation? Why the very same words. To *divide* the province of Quebec, not to *add to it*, any more than to take away from it. Therefore, Upper Canada, in the purview, could include only that part of the province so divided, as was not contained in Lower Canada, but it could not extend beyond those limits which constituted the province of Quebec, otherwise it would certainly have been an act to enlarge rather than an act to divide. In delivering this opinion, I am speaking our unanimous sentiment, for we have consulted our brother Perrault upon the subject, and he clearly concurs with us. According to our understanding of the act and the royal proclamation, we are bound to say, that we consider the argument of the gentlemen concerned for the prisoner, though presented with great ability and ingenuity, must fail, because the western boundary of the province of Upper Canada is, "a line drawn due north from the head of Lake Temiscaming till it strikes the boundary line of Hudson's Bay." The question of fact will remain with the jury. It is they who are to say whether this place, the Dalles, is, or is not, to the west of the line which we now declare to be the western boundary of his Majesty's province of Upper Canada. If they are of opinion that it is within, or to the east, of this western line, then it is in the province of Upper Canada, and not within our jurisdiction; but, if they are of opinion that it is to the west of this line, then, I am giving you our unanimous opinion when I declare, that the Dalles are in the Indian territory, and not within the limits of the province of Upper or Lower Canada, but clearly within the jurisdiction of this

Court, by the act of the 43d King, cap. 138, which extends our power to "the trial and punishment of person guilty of offences within certain parts of North America."

## CHARGE TO THE JURY,

BY THE

### HONORABLE CHIEF JUSTICE SEWELL.

Messieurs les Jurés.—Le prisonnier à la barre est accusé d'avoir tué et assassiné Owen Keveny dans les territoires Sauvages. La substance de ce long indictement est ceci, que Charles De Reinhard, le prisonnier, et un nommé Mainville, (qui n'est pas ici,) l'a tué avec un fusil, ou un sabre, ou les deux, et que les autres, M'Lellan, Grant, Cadotte, et Desmarais, ont été complices, c'est-à-dire qu'ils avoient, avant ou au tems du meurtre, y aidé, ou conseillé, mais à présent c'est seulement avec De Reinhard que vous avez à faire. L'indictement comprend plusieurs comptes, ce qui est à l'ordinaire, parceque les officiers de la Couronne ne savent pas toujours à quelle partie du cas ils ont rapport, ou quelle preuve ils seront capable de produire. La charge est contenue généralement dans les huit chefs, desquels je vous donnerai un abrégé. La charge dans le premier chef est, que De Reinhard a tué Owen Keveny avec un sabre, et que les autres étoient présens, c'est-à-dire, actuellement aidant au meurtre, ou prêts d'y avoir aidé, s'il avoit été nécessaire. Par le second, il est accusé avec cette différence seulement, qu'il est accusé de l'avoir tué avec un fusil, au lieu d'un sabre, et les autres d'avoir été présens, comme dans

le premier chef. Par le troisième, il est accusé de l'avoir tué, non avec un fusil, ni avec un sabre, seulement; mais avec les deux conjointement. Le quatrième chef dit, qu'un nommé Mainville l'a tué avec un fusil, les autres étant présents, l'aidant et l'assistant. Le cinquième chef, encore dit, que De Reinhard l'a tué avec un sabre, et que M'Lellan, Grant, Cadotte, et Desmarais, étoient complices avant et après le fait. Le sixième chef, l'accuse d'avoir tué Keveny avec un sabre, mais, comme le dernier, ne dit pas que M'Lellan, Grant, Cadotte, et Desmarais, étoient présents, mais qu'auparavant ils ont conseillé le meurtre, et qu'après l'avoir commis, ils ont aidé le prisonnier à s'échapper. Le septième chef, encore dit, que De Reinhard l'a tué conjointement avec un sabre et un fusil, et que ces quatre mêmes personnes étoient complices avant et après le fait. Le huitième et dernier chef, accuse Mainville de l'avoir tué avec un fusil, et dit que De Reinhard étoit présent, et aidant à le tuer, et que M'Lellan, Grant, Cadotte, et Desmarais, n'étoient pas présents quand le meurtre a été commis, mais qu'ils ont été accessoires avant et après le fait. Voilà, messieurs, tous les chefs de cet indictement. A cet indictement le prisonnier a répondu qu'il n'est nullement coupable. Les officiers de la Couronne ont dit qu'il est coupable. C'est votre devoir, messieurs, sur vos serments, de dire si le prisonnier est coupable ou non. Sur la question il y a trois points qui demandent et méritent bien votre attention.

Le premier point est de savoir si Keveny est actuellement tué.

Le second est de savoir s'il a été tué par les mains de De Reinhard, ou de Mainville, et, si vous trouvez qu'il a été tué par Mainville, de savoir si De Reinhard étoit présent, l'aidant à l'achever. Il faut que je vous dise, comme il n'y a pas de diffé-

rence dans la loi, qu'en ce cas, les deux sont également coupables. Il n'est pas nécessaire que les deux se soient aidés à le tuer; s'ils étoient présents, l'un et l'autre, ils sont également coupables.

Le troisième point que vous devez examiner est ceci. Si vous trouvez que le crime a été commis, c'est à vous de dire s'il a été expliqué par aucun moyen qui puisse diminuer le crime, et le réduire au degré d'homicide. Sur ce point c'est mon devoir de vous dire, que si vous trouvez qu'il a été tué de la manière dit dans l'indictement, il n'y a point de doute que le prisonnier est coupable de meurtre, parceque les circonstances de son cas, suivant le témoignage que vous avez entendu, ne vous laisseroient pas le pouvoir de diminuer le crime, aucune excuse ni aucune nécessité de l'avoir commis s'y trouvant. Donc, vous n'avez que les deux premières questions à considérer; premièrement, si véritablement Kevny est mort, et secondement, s'il a été tué par le prisonnier, ou s'il a été tué par Mainville du savoir de De Reinhard, y étant présent, et y aidant. Voilà, messieurs, les questions.

Avant d'expliquer le témoignage, il sera nécessaire de prendre connoissance de l'autorité par laquelle la Cour a le droit de juger le procès du prisonnier. Par le statut de 1803, pouvoir a été donné à la Cour du Haut Canada, et aux Cours du Bas Canada de juger et punir les personnes qui ont commis des crimes dans les territoires Sauvages, et le statut explique bien ce qu'il a entendu par les territoires Sauvages: il dit, "Vo que des crimes et offenses ont été commis dans les territoires Sauvages et autres parties de l'Amérique, hors des limites des provinces du Haut ou du Bas Canada, ou d'aucune d'eux, ou de la juridiction d'aucune Cour établie dans ces provinces, ou hors des limites d'aucun gouvernement ci-

" vil des Etats Unis de l'Amérique, et donc ne  
 " sont pas du ressort d'aucune juridiction quelcon-  
 " que, et que par cette raison des crimes et of-  
 " fenses grands ont restés, et pouvoient encore à  
 " l'avenir, rester, sans punition et grandement s'au-  
 " gmenter. Pour y remédier, qu'il plaise à votre  
 " Majesté, d'ordonner, et qu'il soit ordonné par  
 " Sa très excellente Majesté Royale, par et avec  
 " le consentement et avis des Seigneurs spirituels  
 " et temporels, et des Communs, en ce parlement  
 " présent assemblés, et par l'autorité des mêmes,  
 " que depuis et après la passation de cet acte,  
 " toutes les offenses commises dans les territoires  
 " Sauvages, ou les parties de l'Amérique hors des  
 " limites d'aucune des dites provinces du Haut ou  
 " Bas Canada, ou d'aucun gouvernement civil des  
 " Etats Unis de l'Amérique, seront, et seront esti-  
 " mées d'être des offenses de la même nature, et se-  
 " ront jugées de la même manière, et sujettes à la  
 " même punition que si elles avoient été commises  
 " dans la province de Haut ou Bas Canada." Par  
 " conséquent il est absolument nécessaire de savoir si  
 " l'endroit où la mort est arrivée, où le meurtre a  
 " été commis, est hors des limites de Haut ou Bas  
 " Canada, ou des Etats Unis de l'Amérique, parce-  
 " que, s'il y est, nous avons le pouvoir de juger le  
 " prisonnier, et au contraire, s'il n'y est pas, nous  
 " n'avons pas le droit de le juger. La première  
 " question donc que avez vous à déterminer sera où  
 " est ce que Keveny a trouvé sa mort? Non pas  
 " dans la province du Bas Canada assurément. Il  
 " y a deux autres endroits qui demandent votre con-  
 " sideration. Premièrement le Haut Canada. La  
 " limite Ouest du Haut Canada est une ligne tirée  
 " vrai nord de la jonction des rivières Ohio et Mis-  
 " sissippi, dans la latitude de 37° 10' nord, et la  
 " longitude de 88° 50' ouest. Il faut que je vous  
 " dise que c'est à nous à déterminer la loi, et à vous

de juger des faits, et suivant la loi nous avons entendu les avocats sur ce sujet hier, et nous avons déclaré aujourd'hui que la limite ouest du Haut Canada est une telle ligne; et si les Dalles se trouvent à l'est d'une telle ligne, elles sont dans la province du Haut Canada, et conséquemment hors de notre juridiction. Regardons à présent aux témoignages. Le premier témoin de la part de la Couronne est monsieur Sax. Il a dit, "je connois les limites de la province de Haut Canada d'après le plan."<sup>(1)</sup> "The mouth of the river

(1) *Gentlemen of the Jury.*

The prisoner at the bar is accused of having killed and murdered Owen Keveny in the Indian territories. The substance of this long indictment is this, that Charles de Reinhard, the prisoner, and one named Mainville, (who is not here) killed him with a gun, or a sword, or both, and that the others, M'Lellan, Grant, Cadotte, and Desmarais, were accomplices, that is to say, that they did, before or at the time of the murder, aid in or advise the same, but at present it is only with De Reinhard that you have to do. The indictment comprehends several counts, which is usual, because the officers of the Crown do not always know to what part of the case they apply, or what proof they are able to produce. The charge is contained, generally, in the eight counts, of which I will give you an abstract. The charge in the first count is, that De Reinhard killed Owen Keveny, with a sword, and that the others were present, that is to say, actually assisting in the murder, or ready to have assisted, if it had been necessary. By the second, he is accused, with this difference only, that he is accused of having killed him with a gun, instead of a sword, and the others of having been present as in the first count. By the third, he is accused of having killed him, not with a gun nor with a sword alone, but with both together. The fourth count says, that one named Mainville killed him with a gun, the others being present, aiding and assisting him. The fifth count again says, that De Reinhard killed him with a sword, and that M'Lellan, Grant, Cadotte, and Desmarais, were accomplices before and after the fact. The sixth count accuses him of having killed Keveny with a sword, but, like the last, does not say that M'Lellan, Grant, Cadotte, and Desmarais, were present, but that they previously counselled the murder, and that, after it was committed, they assisted the prisoner to escape. The seventh count again says,

" Ohio, that is, where it strikes the banks of the  
 " Mississippi, and discharges itself into the Mis-  
 " sissippi, is in  $37^{\circ} 10'$  north latitude, and longi-  
 " tude,  $88^{\circ} 50'$  ouest de Greenwich. Une ligne  
 " tirée vrai nord de là, passera par le lac Supe-

that De Reinhard killed him both with a sword and gun, and that these same four persons were accomplices before and after the fact. The eighth and last count accuses Mainville of having killed him with a gun, and says that De Reinhard was present, and assisting to kill him, and that M'Lellan, Grant, Cadotte, and Desmarais, were not present when the murder was committed, but that they were accessaries before and after the fact. These, gentlemen, are all the counts of this indictment. To this indictment the prisoner has pleaded that he is nowise guilty. The officers of the Crown say that he is guilty. It is your duty, gentlemen, to declare, upon your oaths, whether the prisoner is guilty or not. Upon this question, there are three points that require, and particularly deserve your attention.

The first point is to know whether Keveny was really killed.

The second is to know whether he was killed by the hands of De Reinhard or of Mainville, and, if you find that he was killed by Mainville, to know whether De Reinhard was present, assisting him to finish him. It is necessary I should inform you, as the law makes no distinction, that in that case, both are equally guilty. It is not necessary that both shall have helped each other to kill him, if they were present, the one and the other are equally guilty.

The third point which you must examine is this. If you find that the crime has been committed, it is for you to say, whether it has been explained by any circumstance that may diminish the crime, and reduce it to the degree of homicide. Upon this point it is my duty to tell you, that if you find that he was killed in the manner laid in the indictment, there is no doubt but the prisoner is guilty of murder, because the circumstances of his case, according to the evidence which you have heard, would not leave you the choice of diminishing the crime, there not appearing any excuse or any necessity for having committed it. You have, therefore, only the two first questions to consider, first, whether Keveny is really dead, and secondly, whether he was killed by the prisoner, or whether he was killed by Mainville, with the knowledge of the prisoner, he being present, aiding and assisting. These, gentlemen, are the questions.

Before reciting the evidence, it will be necessary to take notice of the authority by which the Court possesses the right of judging the prisoner's case. By the statute of 1803, power was



"rieur, et laissera le Fort William à trois quarts  
 "d'un degré à l'ouest. Le lac Winnipic est entre  
 "les 50<sup>me</sup> et 51<sup>me</sup> degrés de latitude nord. Le  
 "Portage des Rats est dans la latitude de 49° 45'  
 "nord, et la longitude de 94° 6' ouest. Toute

given to the Court of Upper Canada, and to the Courts of Lower Canada, to try and punish those persons who had committed crimes in the Indian territories, and the statute clearly explains what was meant by the Indian territories: it says, "Whereas crimes and offences have been committed in the Indian territories; and other parts of America, not within the limits of the provinces of Upper or Lower Canada, or either of them, or of the jurisdiction of any of the Courts established in those provinces, or within the limits of any civil government of the United States of America, and are therefore not cognizable by any jurisdiction whatever, and by reason thereof great crimes and offences have gone, and may hereafter go, unpunished, and greatly increase. For remedy whereof, may it please your Majesty, that it may be enacted, and be it enacted by the King's most excellent Majesty, by and with the consent and advice of the Lords spiritual and temporal and Commons, in this present parliament assembled, and by the authority of the same, that from and after the passing of this act, all offences committed within any of the Indian territories, or parts of America, not within the limits of either of the said provinces of Upper or Lower Canada, or of any civil government of the United States of America, shall be, and be deemed to be, offences of the same nature, and shall be tried in the same manner, and subject to the same punishment, as if the same had been committed within the province of Lower or Upper Canada." It is in consequence absolutely necessary to know whether the place where the death occurred, where the murder was committed, is without the limits of Upper or Lower Canada, or of the United States of America, for if it is without those limits we have the power of trying the prisoner, and on the contrary, if it is not so, then we have not the right of trying him. The first question therefore for you to determine will be, where was it that Keveny met his death? Not in the province of Lower Canada certainly. There are two other quarters which require your consideration. First, Upper Canada. The western boundary of Upper Canada is a line drawn due north from the junction of the rivers Ohio and Mississippi, in the latitude of 37° 10' north, and 88° 50' west longitude — I am bound to tell you that it is ~~we~~ who are to decide upon the law, and you who are to judge of the facts; and, according to

“ la rivière Winnipic est au moins cinq degré, à  
 “ l’ouest de la ligne tirée vrai nord de l’embou-  
 “ chure de l’Ohio.” Donc il est manifeste qu’un  
 endroit dans la longitude de  $94^{\circ} 6'$  ouest se trouve  
 bien à l’ouest de la limite du Haut Canada. Il y a un  
 autre témoin, monsieur Joseph Bouchette, qui dit la  
 même chose. “ La limite de la ci-devant province de  
 “ Québec est une ligne tirée de l’embouchure de  
 “ la rivière Ohio au nord, jusqu’aux limites du  
 “ territoire de la Compagnie de la Baie d’Hudson.  
 “ La latitude de cette embouchure est de  $37^{\circ} 10'$   
 “ nord, et la longitude,  $88^{\circ} 58'$  ouest de Green-  
 “ wich. L’endroit appelé les Dalles est sur la ri-  
 “ vière Winnipic, quatre lieues au de là, et au nord  
 “ du Portage des Rats.” Mais cela appartient à  
 une autre partie du témoignage. Vous voyez que  
 monsieur Bouchette et monsieur Sax s’accordent  
 entièrement. Il y avoit d’autre témoignage sur ce  
 point, mais peut-être vous n’avez pas de doute que  
 les Dalles sont à l’Ouest de la ligne de laquelle ces  
 messieurs, ont parlé. Si vous avez aucune doute  
 je vous lirai d’autre evidence.

*Mr. Levallé, a juror.*—Non, monsieur, ce n’est  
 pas nécessaire.<sup>(17)</sup>

law, we have heard the arguments of counsel on the subject  
 yesterday, and to day, we decided that the western limit of  
 Upper Canada is such a line, and if the Dalles are to the east  
 of such a line, they are in the province of Upper Canada, and  
 consequently not within our jurisdiction. Let us now look at  
 the evidence. The first witness on the part of the Crown is Mr.  
 Sax. He said, “ I am acquainted with the boundary of the  
 province of Upper Canada, according to the map.

<sup>(17)</sup> “ A line drawn due north from there will cross Lake Su-  
 “ perior, and will leave Fort William three quarters of a degree  
 “ to the westward. Lake Winnipic is between the 50th and  
 “ 51st degrees of north latitude. The Portage des Rats is in  
 “ the latitude of  $49^{\circ} 45'$  north, and longitude  $94^{\circ} 6'$  west.—  
 “ The whole of the River Winnipic is at least five degrees to  
 “ the west of the line drawn due north from the mouth of the  
 “ Ohio.” It is therefore manifest that a spot which is in the

*Chief Justice Sewell.*—Une autre matière pour vous à considérer est si les Dalles sont au nord d'une ligne entre les Etats Unis et la province du Haut Canada. C'est de conséquence d'être établi, parceque si l'endroit est au nord d'une telle ligne, il est véritablement dans le territoire Sauvage, et s'il est au sud d'une telle ligne c'est dans les Etats Unis, et conséquemment hors de notre juridiction. Sur ce point le témoignage est également fort avec l'autre. L'évidence de monsieur Bouchette est comme suit : " L'endroit qu'on appelle les Dalles " est sur la rivière Winnipic, quatre lieues au de- " là et au nord du Portage des Rats, et du Lac " des Bois, après le plan d'Arrowsmith, et dans la " latitude de 49° 51' nord, et la longitude de 94° " 10' ouest." Voilà le témoignage le plus clair ; mais je désire maintenant d'expliquer le témoignage de Mr. Coltman. Il dit, " je ne crois pas " qu'aucune partie de la rivière Winnipic se trou- " vera au sud d'une ligne courant ouest du Lac " des Bois, ou au moins une très petite partie, et " très certainement une ligne courant du Lac des " Bois à la rivière Mississippi laissera toute la ri- " vière Winnipic au nord-ouest d'une telle ligne.

longitude of 94° 6' west must be much to the westward of the boundary of Upper Canada. There is another witness, Mr. Joseph Bouchette, who says the same thing. " The boundary " of the late province of Quebec is a line drawn from the mouth " of the river Ohio, to the north, unto the boundary of the ter- " ritory of the Hudson's Bay Company. The latitude of this " mouth is 37° 10' north, and the longitude, 88° 58' west " from Greenwich. The place called the Dalles is upon the " river Winnipic, four leagues beyond, and to the northward of " Portage des Rats." But that belongs to another part of the evidence. You see that Mr. Bouchette and Mr. Sax entirely agree. There was some other evidence to this point, but perhaps you have no doubt of the Dalles being to the westward of the line of which these gentlemen spoke. If you have any doubt, I will read other evidence to you.

*Mr. L. V.*—No, sir, it is not necessary.

« J'ai passé deux fois l'endroit appelé les Dalles,  
 « qui est partie de la rivière Winnipic. Elles sont  
 « distantes de cinq ou six lieues du Portage des  
 « Râts, et du Lac des Bois, au nord, tirant un peu  
 « sur l'ouest." Monsieur Gale qui fut examiné a-  
 près monsieur Coltman dit la même chose, et con-  
 firme monsieur Coltman dans chaque particulier.  
 Voilà tout le témoignage à l'égard de notre juris-  
 diction, et de la localité des Dalles, et il prouve que  
 les Dalles sont à l'Ouest de la limite du Haut Ca-  
 nada et au nord des Etats Unis. Par conséquence  
 c'est dans le pays qu'on appelle dans le statut de  
 1803, les territoires Sauvages. A présent nous  
 allons regarder le témoignage sur les faits du cas.  
 Le témoignage est bien long, mais la Cour ne se  
 plaint pas des officiers de la Couronne, ni des avo-  
 cats du prisonnier. Tous les deux ont fait leur  
 devoir, et l'ont bien fait. Quoique le témoignage  
 soye long, très long, les faits du cas sont peu. Les  
 officiers de la Couronne mettent leur cas sur diffé-  
 rentes confessions du prisonnier, confirmées par plu-  
 sieurs circonstances qu'on dit prouver qu'il avoit  
 le dessein de le tuer, et des faits dans l'exécution  
 de ce dessein, sa déclaration publique qu'il l'avoit  
 tué, et sa confession tacite qu'il l'avoit fait, au tems  
 que Mainville a raconté la manière dans laquelle  
 Keveny étoit tué ; sa déclaration quand le butin  
 fut séparé, que le droit du meilleur lui appar-  
 tenoit, parceque c'étoit lui qui l'avoit tué, et non  
 pas seulement qu'il a dit ces mots, mais qu'il  
 a en même tems fait la séparation entre eux en  
 gardant le meilleur pour lui. Voilà le cas de la  
 part de la Couronne. De la part du prisonnier il  
 est dit. J'ai une defense à presenter. Ma de-  
 fense est ceci. Ce n'est pas une defense ordi-  
 naire. Ma defense est que l'état de ce pays étoit  
 si extraordinaire, que ma confession doit être nulle.  
 Que le pays en haut étoit dans un état de guerre,

et mes confessions étoient les effets de la crainte, et extorquées par les circonstances, et les événements qui m'environnoient. Que ces confessions ne contiennent pas les faits, mais qu'elles ont été exigées par les circonstances pour mettre ma vie en sureté. Il a attaqué la crédibilité des témoins de la part de la Couronne, particulièrement le témoignage du capitaine D'Orsonnens, de Faye, et de La Pointe. C'est à vous, messieurs, à juger. Les officiers de la Couronne disent que les confessions du prisonnier sont confirmées par ces hommes, Faye et La Pointe, et le prisonnier dit qu'il a détruit leur témoignage en présentant à la Cour qu'ils s'étoient contradits. C'est à vous, messieurs, à juger et non à moi. Mon savant confrère, Mr. Justice Bowen, vous lira le témoignage, et vous y donnerez l'attention qu'il mérite, afin que vous le compreniez bien, et que vos esprits soient satisfaits, et que vous puissiez connoître si messieurs les officiers de la Couronne ou le prisonnier ont établi leur allegation. Après que vous avez entendu le témoignage, je me propose de vous faire observer quelques particularités dans ce témoignage, qui me paroissent nécessaires pour votre éclaircissement, tant à l'égard du prisonnier qu'à l'égard de la Couronne.<sup>(1\*)</sup>

*The evidence was then read by Mr. Justice Bowen.*

(1\*) Another matter for your consideration is, whether the Dalles are to the north of a line between the United States, and the province of Upper Canada. It is of importance to ascertain this, because if the spot is to the north of such a line, it is in truth in the Indian territory, and if it is to the south of such a line, it is in the United States, and consequently not within our jurisdiction. On this point the evidence is equally as strong as on the other. Mr. Bouchette's evidence is as follows:—"The place which is called the Dalles is, upon the river Winnipeg four leagues beyond and to the north of Portage des Rats, and of the Lake of the Woods, according to Arrowsmith's map, in latitude 49° 51' north, and longitude 94° 10' west." This

*Chief Justice Sewell.*—Avant que je fasse mes remarques sur le témoignage que vous avez encore entendu, c'est mon devoir de vous dire que vous ne devez pas régler vos opinions sur ce que je vous dis au moindre degré, mais qu'il faut don-

evidence is most distinct; but I wish now to explain the evidence of Mr. Coltman. He says, "I do not believe that any part of the river Winnipic will be found to be to the southward of a line running west from the Lake of the Woods, or at least only a very small part, and most certainly a line running from the Lake of the Woods to the river Mississippi, will leave the whole of the river Winnipic to the north-west of such a line. I twice passed the place called the Dalles, which is part of the river Winnipic. They are from five to six leagues distant from Portage des Rats, and from the Lake of the Woods, to the north tending a little towards the west." Mr. Gale, who was examined after Mr. Coltman, says the same thing, and confirms Mr. Coltman in every particular. This is all the evidence with respect to our jurisdiction, and to the locality of the Dalles, and it proves that the Dalles lie to the west of the boundary of Upper Canada, and to the north of the United States.—Consequently it is in the country designated in the act of 1803 as Indian territories. Now let us look at the evidence as to the facts of the case. The evidence is very long, but the Court does not complain of the officers of the Crown, nor of the counsel for the prisoner, both have done their duty, and have done it well. Although the evidence is long, very long, the facts of the case are but few. The Crown officers rest their case upon the various confessions of the prisoner, confirmed by several circumstances, which, it is said, prove that it was his intention to kill him, and by facts occurring in the execution of that intention; his public declaration that he had killed him, and his tacit confession that he had done it at the time when Mainville related the mode in which Keveny had been killed; his declaration when the things were divided, that the right to have the best belonged to him, because it was he who had killed him; and not only that he uttered these words, but that at the same time, he made the division between them, keeping the best for himself. This is the case on the part of the Crown. On the part of the prisoner it is alleged. I have a defence to make. My defence is this. It is not an ordinary defence. My defence is that the situation of the country was so extraordinary, that my confession must be void. That the country above was in a state of warfare, and my confessions were the effects of terror, and extorted by the circumstances and the occurrences by which I

ner votre attention à la question criminelle pour savoir s'il est coupable ou non. Je vous rappelle encore que c'est à vous de juger de la crédibilité des témoins, et je dois aussi faire une autre remarque, savoir que c'est aussi à vous de juger de la situation du pays, des circonstances des confessions, et généralement de la crédibilité de tout le témoignage. Le fondement de l'évidence des officiers de la Couronne est les confessions du prisonnier, confirmées par d'autres témoins, qu'il a tué Keyeny. Cette confirmation, les officiers de la Couronne disent qu'on produit dans l'évidence de Faye de sa conduite au tems qu'ils ont rencontré la brigade de la rivière Cygne, et que les gens de ces canots ont dit aux gens du canot de monsieur M'Lellan, que Keyeny étoit en haut des Dalles, et dans l'expression du prisonnier, " qu'il n'auroit pas " soin, ou qu'il en auroit bien soin, que c'étoit lui " qui l'avoit pris prisonnier : " mais en même tems vous vous appellerez que Faye a dit qu'il " ne " pouvoit pas dire que le prisonnier l'a dit en me-

was surrounded. That these confessions do not relate real facts, but were made under the pressure of circumstances, in order to put my life in safety. He has attacked the credibility of the witnesses on the part of the Crown, particularly the testimony of captain D'Orsonnens, of Faye, and of La Pointe. It is for you, gentlemen, to judge. The officers of the Crown say, that the confessions of the prisoner are confirmed by these men, Faye and La Pointe, and the prisoner says that he has destroyed their testimony, in shewing to the Court that they contradicted themselves. It is for you, gentlemen, to judge, and not for me.—My learned brother, Mr. Justice Bowen, will read to you the evidence, and you will give that attention to it which it deserves, in order that you may thoroughly understand it, and that your minds may be satisfied, and that you may discern whether the officers of the Crown or the prisoner have established their affirmation. After you have heard the evidence, I propose to myself to bring to your notice some particulars in the evidence, which seem to me to require it for your correct judgment, both with regard to the prisoner, and with regard to the Crown.

“ nace.” Ils disent aussi que La Pointe raconte la même conversation, mais avec une addition très importante. Il a juré qu’au tems de cette conversation il a entendu De Reinhard dire, “ J’en aurai bien soin, c’est moi qui le tuera.” Une autre circonstance de soupçon (disent les officiers de la Couronne,) est qu’il étoit envoyé avec cinq bois brûlés et ce fait a été confirmé par les témoins du prisonnier. Une autre partie du témoignage contre le prisonnier, est la conversation entre les gens du canot de M’Lellan, au tems qu’on entendoit le coup de fusil sur l’eau, (duquel je me propose de parler encore.) La Pointe dit qu’à ce tems, quelqu’un des bois brûlés a crié, “ Oh les chiens ! ils l’ont tué,” et qu’à ce tems le prisonnier De Reinhard étoit avec Keveny. Messieurs les officiers de la Couronne disent que cette expression faite au moment indique l’attente de tous qui étoient dans le canot que Keveny auroit été tué. Une autre circonstance qui demande votre attention est celle-ci. La Pointe dit qu’il a vu le sabre de De Reinhard, mais qu’il ne sait pas qu’il étoit ensanglanté ; l’autre témoin, (Faye,) dit positivement qu’il a vu le sabre dans sa main, et qu’il avoit vu des taches du sang sur le sabre. Les deux hommes ont parlé des habits de Keveny qui étoient dans le petit canot à son arrivée. L’un a dit qu’ils n’étoient pas certainement les habits qu’il portoit au tems qu’ils l’ont laissé, mais il dit, sur son serment, qu’ils étoient les habillemens de Keveny, et qu’il les a vu porter par De Reinhard (Keveny) pendant leur voyage. Les deux hommes s’accordent en disant que De Reinhard a séparé le butin du Keveny, et tous les deux parlent du différent avec les bois brûlés, et ils s’accordent aussi en parlant de la séparation du butin. La Pointe dit que le prisonnier a dit, “ Comme c’est moi qui l’a tué, j’aurai le choix, “ sur le butin, et comme Mainville étoit avec moi,



" et qu'il aida à le tuer, il aura plus que les autres." Faye, en parlant de cette affaire, dit la même chose, La Pointe a dit " qu'à l'arrivée du petit canot quel-  
 " qu'un à terre a demandé, qu'est ce qu'on avoit  
 " fait de Keveny, et que De Reinhard, étant alors  
 " dans le canot, a répondu : Il est bien caché, il  
 " ne reviendra plus." Faye, en parlant de cette  
 conversation dit, " qu'à l'arrivée du canot, M'Lel-  
 " lan, Grant, Cadotte, et un autre se sont avancés,  
 " et qu'un des quatre a demandé, qu'est ce qu'ils  
 " ont fait du prisonnier Keveny," et il dit que l'un  
 des trois qui étoient dans le canot, mais il ne dit pas  
 lequel, a répondu : " il est bien où nous l'avons  
 " mis." La Pointe a donné une relation particu-  
 lière par laquelle il dit, que Mainville a raconté la  
 manière dans laquelle le meurtre a été commis, et  
 la résistance que Keveny a fait, et tous les deux  
 s'accordent en disant, " qu'à ce tems De Reinhard  
 " étoit bien proche, mais qu'il n'a rien dit." Faye  
 et La Pointe s'accordent encore en représentant  
 " qu'ils furent défendus par le prisonnier de parler  
 " de ce meurtre, et qu'on leur a dit, que si on par-  
 " loit du meurtre, qu'ils seroient punis." Ses con-  
 fessions faites à cinq personnes, sont la plus forte  
 évidence contre le prisonnier. Il a fait la même  
 confession aux cinq personnes, et nous avons, (a-  
 près l'argument des conseils,) déclaré que nous ne  
 les pouvons pas rejeter. Premièrement il l'a  
 faite au capitaine D'Orsonnens ; après à monsieur  
 Nolin, quand ils se sont promenés ensemble. A-  
 lors il y a sa confession à monsieur Vitchie, autre-  
 fois son camarade, dans laquelle il a raconté toutes  
 les circonstances de la mort de Keveny, avec une  
 autre, savoir, " qu'il avoit tout avoué au capitaine  
 " D'Orsonnens, et qu'il alloit faire autant à Milord  
 " Selkirk, espérant d'être reçu témoin de la part  
 " de la Couronne," mais il n'a pas dit qu'il a eu  
 aucune conversation avec le capitaine D'Orsonnens

sur cette espérance. Ensuite nous le trouvons dans les mains de Milord Selkirk, avec sa déclaration, faite de sa propre main, dans son écriture propre. Ces circonstances vous considerez sans doute bien fortes, mais il y a encore une autre, laquelle, si elle n'est pas plus forte que les autres, est également digne de remarque. Je fais allusion à sa déclaration à monsieur M'Donell. Il commençoit une conversation lui-même avec monsieur M'Donell, et l'a dit "qu'il étoit prisonnier, et qu'il avoit tué un monsieur de la Compagnie de la Baie d'Hudson," et disoit, ou ajoutoit, "Voulez vous que je vous le nomme?" et quand monsieur M'Donell l'a dit qu'oui; alors il nomma Keveny. C'est une circonstance très extraordinaire de soi-même, mais monsieur M'Donell a dit qu'il parloit de Keveny avec regret, et penitence pour ce qu'il avoit fait. La loi considère toujours un acte de la conscience comme une circonstance d'une description la plus forte. Si une confession est extorquée par l'espérance, ou par la crainte, elle n'est pas évidence, mais dans cette confession, faite à monsieur M'Donell, je pense que vous verrez la force de sa conscience. Il a donné toutes les circonstances particulières, et monsieur M'Donell ajoute, "le prisonnier, De Reinhard, m'a paru très pénitent pour ce qu'il avoit fait, et confessoit qu'il avoit tort, mais qu'il avoit été induit en erreur par l'ignorance." Je n'ai pas voulu exprimer aucune opinion, excepté celle-ci. La première fois que les témoins disent que le prisonnier a confessé, il n'étoit pas sous l'influence de la peur, ni dans l'attente de bonheur. C'étoit au moment que le petit canot se rendit à terre, après que le meurtre est chargé d'avoir été commis. Si vous avez croyance que sa seconde confession a été influée par les circonstances de la situation de ce pays; si vous considerez qu'au tems de son récit

au capitaine D'Orsonnens il n'étoit pas libre, donc vous la rejetterez ; c'est à vous de peser si son esprit n'étoit pas libre et si vous êtes influés à croire que c'est ainsi donc rejettez-là. De la part de la Couronne il m'a paru, messieurs, que je vous devois ces remarques sur l'évidence. Ses confessions ont été faites fréquemment. Il en a faite au capitaine D'Orsonnens ; ce qu'il a dit au capitaine D'Orsonnens, la même chose a-t-il dit à monsieur Nolin ; à Vitchie il a encore dit la même chose ; à monsieur M'Donell il a dit la même chose ; et assurément au Comte de Selkirk il a dit la même chose.

De la part du prisonnier c'est mon devoir de vous dire qu'il a réussi d'établir un état d'affaires très extraordinaire. S'il n'a pas prouvé qu'une guerre ouverte existoit dans ce pays, une guerre connue à la loi, il a prouvé un état de guerre actuelle.—Les différences qui se trouvent entre les témoignages de Faye et de La Pointe dans ce procès, et en outre la différence entre l'évidence de Faye dans les deux procès ont été également prouvées. Faye a dit, (dans ce procès,) “ De Reinhard ne m'a pas dit personnellement qu'il a voit tué Keveny.” Dans l'autre il a dit le contraire. Il y a aussi une différence apparente entre l'évidence de La Pointe dans l'un et l'autre procès. Il a dit dans l'un, quand il a entendu le premier coup de fusil, qu'il étoit à terre, et dans l'autre, qu'il étoit sur l'eau. Je parle à présent de cette partie de son témoignage dans lequel il dit qu'un bois brûlé a fait l'exclamation, “ Oh les chiens ! ils ont tué le prisonnier.” Il m'a paru qu'il y a une contradiction ; mais c'est à vous de juger, et je ne donne point d'opinion—je vous lirai son évidence dans l'autre procès dans la Cour du Banc du Roi, comme elle a été produite par le juge Perault : étant transquestionné il a dit, “ quand nous

« nous avons entendu le coup de fusil, nous étions campés, le tems étoit calme, on entendoit bien loin. » Dans ce procès-ci il a donné de l'évidence tout contraire. Mon frère Bowen, l'examina sur ce point, et je vous lirai son évidence dans le procès actuel, et donc vous jugerez, s'il y a une différence essentielle ; « Quand nous étions encore sur l'eau, et avant d'arriver, nous avons entendu un coup de fusil ; c'étoit peut-être au moitié du chemin ; quelqu'un des bois brûlés, étant alors dans le canot, a dit, avez vous entendu le coup de fusil, ils l'ont tué. » Assurément ces histoires ne sont pas les mêmes.—Dans l'un procès, il a juré que le coup de fusil arriva quand il étoit à terre, et dans le procès actuel, qu'il arriva pendant qu'il étoit sur l'eau. Mais de l'autre côté, il faut que je demande votre attention à une explication que le témoin a donné de ce qu'il a voulu dire quand il a dit « nous avons entendu le coup de fusil ; » mon frère Bowen vous lira l'explication qu'il en a donné.<sup>(1)</sup>

(1) Before I make my observations upon the evidence you have again heard, it is my duty to state to you that you must not, in the least degree, regulate your opinions by what I may say to you, but that you must bestow your attention upon the criminal question to decide whether he is guilty or not. I remind you again, that it is you who are to judge of the credibility of the witnesses, and I must likewise make the further remark, that it is you who are to judge of the situation of the country, of the circumstances that relate to the confessions, and generally of the degree of credit to be given to the whole of the evidence. The foundation of the proof produced by the officers of the Crown is the confession of the prisoner, confirmed by other witnesses, that he killed Keveny. This confirmation, the officers of the Crown say, will be found in the evidence of Faye, as to his conduct at the time they met the Swan river brigade, and when the people of those canoes said to the people of Mr. M'Leelan's canoe, that Keveny was above the Dalles, and in the expressions of the prisoner, "that he would not take care, or, that he would take good care, of him, that it was he who had taken him prisoner;" but at the same time you will recollect that Faye said, that "he could not say that the prisoner had

*Mr. Justice Bowen.*—"Quand nous étions débar-  
 "qué a terre j'ai entendu un coup de fusil; quand  
 "j'ai dit, que nous avons entendu un coup de fu-  
 "sil sur l'eau, je n'ai pas voulu dire que je l'avois  
 "entendu moi-même, mais que les gens dans le

"said so in a threatening way." They allege also that La Pointe relates the same conversation, but with a very important addition. He swore that at the time this conversation took place, he heard De Reinhard say, "I will take good care of him, it is I who will kill him." Another suspicious circumstance, say the Crown officers, is that he was sent with five bois brûlés, and this fact has been confirmed by the witnesses for the prisoner. Another part of the evidence against the prisoner, is the conversation between the people of M'Lellan's canoe, at the time the report of the gun was heard upon the water, (of which I mean to speak again.) La Pointe says, that at that time one of the bois brûlés exclaimed, "Oh, the dogs, they have killed him," and that at that time the prisoner, De Reinhard, was with Keveny. The officers of the Crown maintain that this expression, made use of on the impulse of the moment, demonstrates the expectation which all who were in the canoe had, that Keveny would be killed. Another circumstance which demands your attention is this. La Pointe says, that he saw De Reinhard's sword, but that he does not know whether it was bloody; the other witness, Faye, says positively that he saw the sword in his hand, and that he saw spots of blood on the sword. Both these men talk of Keveny's clothes which were in the small canoe on its arrival. One says that they certainly were not the clothes which he had on at the time they left him, but he says, upon his oath, that they were Keveny's clothes, and that he had seen De Reinhard (Keveny) wear them during the voyage.—Both of them agree in saying that De Reinhard divided Keveny's things, and both of them speak of the misunderstanding with the bois brûlés, and they also agree in relating the conversation which they say took place at the time of the division. La Pointe relates that the prisoner said; "As it was I who killed him, I will have my choice of the things, and as Mainville was with me and helped to kill him, he shall have more than the others." Faye, in speaking of this circumstance, says the same thing. La Pointe says, that "on the arrival of the small canoe, some one on shore asked, what had been done with Keveny, and that De Reinhard, being then in the canoe, replied, he is well hidden, he will not come back again."—Faye, in speaking of this conversation, says that "on the arrival of the canoe, M'Lellan, Grant, Cadoite, and another came

“ canot disoient qu'ils l'avoient entendu. Quand  
 “ Mainville étoit pour arriver à terre des outardes  
 “ se sont adonnées à passer, Mainville a laché un  
 “ coup de fusil, et en a tué une. Quand j'ai en-  
 “ tendu le premier coup, le canot n'étoit pas en-

“ forward, and that one of the four asked; what they had done  
 “ with the prisoner Keveny,” and he says, that one of the three  
 who was in the canoe, but he does not say which, answered,  
 “ He is well where we have left him.” La Pointe has given a  
 separate account, by which he says, that Mainville recounted  
 the manner in which the murder had been committed, and the  
 resistance which Keveny made, and both agree in saying, that  
 at that time De Reinhard was very near, but that he said no-  
 thing. Faye and La Pointe agree again in representing that they  
 were forbidden by the prisoner to talk of this murder, and that  
 they were told, that if they talked of the murder they would be  
 punished. His confessions made to five people are the strongest  
 evidence against the prisoner. He made the same confession  
 to all five, and we have, (after hearing the arguments of coun-  
 sel) decided that we could not reject them. First he made one  
 to captain D'Orsonnens; afterwards to Mr. Nolin, when they  
 were walking together. Then there is his confession to Mr.  
 Vitche, formerly his comrade, in which he relates all the cir-  
 cumstances of the death of Keveny, together with another,  
 namely, “ that he had confessed the whole to captain D'Orson-  
 “ nens, and that he was going to do the same to my Lord Sel-  
 “ kirk, hoping to be admitted king's evidence,” but he did not  
 say that he had had any conversation with captain D'Orsonnens  
 relative to that hope. Afterwards we find him in the hands of  
 Lord Selkirk, with his declaration, made by his own hand, in  
 his proper hand-writing. You will, no doubt, consider these  
 circumstances as very strong, but there is yet another, which,  
 if it be not stronger even than the others, is equally worthy of  
 remark. I allude to his declaration to Mr. Macdonell. He be-  
 gan a conversation himself with Mr. Macdonell, and told him  
 that “ he was a prisoner, and that he had killed a gentleman of  
 “ the Hudson's Bay Company,” and said, or added, “ shall I  
 “ name him to you?” and when Mr. Macdonell said “ yes,”  
 he then named Keveny. This is a circumstance very extraor-  
 dinary of itself, but Mr. M'Donell says he spoke of Keveny with  
 regret, and penitence for what he had done. The law always  
 considers an act of conscience as a circumstance of a very strong  
 nature. If a confession be extorted by hope, or by fear, it is  
 not evidence; but in this confession, made to Mr. Macdonell, I  
 fancy you will perceive the force of conscience. He related all

“ encore en vue. J'étois alors à terre, c'étoit près  
 “ d'une heure avant que Mainville est arrivé.”

*Chief Justice Sewell.*—Vous voyez qu'il dit encore qu'il a entendu deux coups, et il n'y a pas de contradiction dans cette partie de son témoignage.

the particulars, and Mr. Macdonell adds, “ the prisoner, De  
 “ Reinhard, appeared to me to be very penitent for what he  
 “ had done, and confessed that he had done wrong, but that he  
 “ had been led into error through ignorance.” I have not been  
 willing to express any opinion except this. The first time that  
 the witnesses say the prisoner confessed, he was not under the  
 influence of fear, nor in expectation of good. This was at the  
 time when the small canoe arrived, after the murder is charged  
 to have been committed. If you believe that his second confession  
 was influenced by the circumstances of the situation of the  
 country; if you consider that, at the time of his recital to captain  
 D'Orsonnens, he was not free, then you will reject it; it  
 is for you to weigh whether his mind was free, and if you are  
 led to believe that it was not, then reject it. It has appeared  
 to me, gentlemen, that I was bound to make these remarks upon  
 the evidence to you on the part of the Crown. His confessions  
 have been frequent. He made one to captain D'Orsonnens;  
 what he said to captain D'Orsonnens, the same thing he said to  
 Mr. Nolin; to Vitchie he again said the same thing; to Mr.  
 Macdonell he said the same thing; and assuredly he said the  
 same thing to the Earl of Selkirk.

On the part of the prisoner it is my duty to state to you that  
 he has succeeded in establishing the existence of a most extraordinary  
 state of affairs. If he has not proved that an open war  
 existed in that country, a war known to the law as such, yet he  
 has proved a state of actual warfare. The discrepancies between  
 the evidence of Faye and of La Pointe on this trial, as  
 also the difference between Faye's evidence on the two trials  
 have equally been proved. Faye says (in this trial) “ De  
 “ Reinhard did not personally tell me that he had killed Keve-  
 “ ny.” In the other he said the contrary. There is likewise  
 an apparent difference between the evidence of La Pointe on  
 the two trials. In one he said that when he heard the first gun  
 fired, he was on shore, and in the other, that he was on the water.  
 I speak now of that part of his evidence in which he says  
 that a *bois brûlé* uttered the exclamation, “ Oh, the dogs, they  
 “ have killed the prisoner.” It has appeared to me that there  
 is a contradiction in this, but it is for you to judge, and I give  
 no opinion. I will read his evidence as given on the other trial  
 in the Court of King's Bench, as it was produced by Judge

mais dans l'un procès il dit qu'il l'a entendu sur l'eau et à présent il dit qu'il étoit à terre. Je vous dis encore que c'est à vous, messieurs, de juger de la croyance que chaque témoin mérite, c'est à vous de déterminer si La Pointe a expliqué la variation. Si, dans vos esprits vous considerez qu'il a parlé la vérité généralement, et vous êtes satisfaits de l'explication de l'événement du coup de fusil sur l'eau et à terre, c'est votre devoir de le croire, mais, je redis que c'est à vous, et à vous seulement, de juger. Ce sont vos consciences qui doivent être votre seul guide en jugeant, et c'est à vous seulement de juger. Je dois vous dire que Faye est coupable d'une contradiction. En parlant de Keveny au tems que M'Lellan l'a battu il a dit, dans ce procès-ci :

*Mr. Justice Bowen.*—"Quatre ou cinq jours après que nous étions sur l'isle, nous avons vu approcher un canot, il y avoit dedans Mr. Archy, (M'Lellan,) De Reinhard, (le prisonnier actuel,) Mr. Grant, Mr. Cadotte, les nommés Desmarais, et Mainville, aussi un Canadien nommé Rochon; ils montoient la rivière, et gagnoient vers le Lac

Perrault: "being cross-examined, he said, when he heard the report of the gun, we were encamped, the weather was calm, we could hear from afar off." On this trial he has given evidence quite contrary. My brother Bowen examined him on this point, and I will read his evidence to you on the present trial, and then you will decide whether there is an essential difference. "While we were yet on the water, and before we arrived, we heard the report of a gun; it was perhaps about half-way; some one of the bois brûlés then in the canoe, said, 'did you hear that gun, they have killed him.'" Certainly these narratives are not the same. On the one trial he swore that the report of the gun occurred when he was on shore, and in the present trial, that it occurred while he was on the water. But on the other hand, I must call your attention to the explanation which the witness gave of what he meant to say when he said "we heard the report of a gun;" my brother Bowen will read to you the explanation he gave.



“ des Bois ; ils se sont approchés de l'isle où nous  
 “ étions, une partie d'eux s'est débarquée, mais non  
 “ pas De Reinhard ; ils m'ont demandé ce que j'a-  
 “ vois fait du prisonnier Keveny, j'ai répondu qu'on  
 “ l'avoit laissé sur une isle ; que le Sauvage qu'on  
 “ nous avoit donné pour guide l'avoit lui-même lais-  
 “ sé là. Reinhard étoit dans le canot, et auroit  
 “ peut-être entendu ce que se disoit à terre. Mr.  
 “ Archy m'a frappé avec une perche de canot, La  
 “ Pointe s'est sauvé dans le bois, mais Mr. Archy  
 “ l'a fait revenir, et l'a battu aussi, disant que ce  
 “ n'étoit pas notre affaire.”<sup>(20)</sup>

(20) *Mr. J. B.*—“ When we had landed, I heard the report  
 “ of a gun ; when I said that we had heard the report of a gun  
 “ upon the water, I did not mean to say that I had heard it  
 “ myself, but that the people in the canoe said that they had  
 “ heard it. When Mainville was about to land, some bustards  
 “ flew past, Mainville fired his gun and killed one of them ;  
 “ when I heard the first gun, the canoe was not in sight. I was  
 “ then on shore ; it was nearly an hour before Mainville ar-  
 “ rived.”

*C. J. S.*—You see that he still says that he heard two reports,  
 and there is no contradiction in that part of his testimony, but  
 on the other trial, he said that he heard it upon the water, and  
 now he says that he heard it when he was on shore. I again  
 say to you, gentlemen, it is for you to judge of the belief of  
 which each witness is worthy, it is for you to determine whether  
 La Pointe has explained the variation. If, in your minds, you  
 are satisfied with the explanation relative to the report of the  
 gun upon the water, and on shore, it is your duty to believe  
 him ; but, I repeat to you, it is for you, and you alone, to  
 judge. Your conscience must be your only guide in determin-  
 ing, and it is you alone who are to determine. I must tell  
 you that Faye is guilty of a contradiction. Speaking of Keveny  
 at the time M'Lellan beat him, he says in this trial.

*Mr. J. B.*—“ Four or five days after we were on the island,  
 “ we saw a canoe coming ; in it were Mr. Archy, (M'Lellan,)  
 “ De Reinhard, (the present prisoner,) Mr. Grant, Mr. Cadotte,  
 “ the persons named Desmarais, and Mainville, also a Canadian  
 “ named Rochon ; they were going up the river, and were pro-  
 “ ceeding towards the Lake of the Woods ; they approached the  
 “ island where we were ; a part of them landed, but not De  
 “ Reinhard, they asked me what I had done with the prisoner

*Chief Justice Sewell.*—La différence entre ce témoignage et celui qu'il a rendu auparavant est celle-ci. Dans le terme de Mars il a dit que cette conversation a eu lieu *après* qu'il avoit embarqué dans le canot; et à présent vous entendez qu'il a juré que c'étoit à terre et *avant* d'embarquer. Si vous trouvez la contradiction assez forte, pour détruire son témoignage, ou pour vous faire douter de sa vérité entièrement, donc vous n'y donnerez aucune croyance. Il y a d'autres circonstances que le prisonnier, avec beaucoup de raison, dit être à lui très importantes. Il dit, premièrement, que José Fils de la Perdrix Blanche, n'est pas produit de la part de la Couronne, et qu'il avoit raison de l'attendre, parcequ'il étoit pris par le commissaire pour les territoires Sauvages, en vertu de la proclamation de son altesse royale le Prince Régent, pour servir, comme il a entendu, de témoin dans ce cas, et monsieur Coltman l'a confirmé. Une autre circonstance est celle-ci. Il dit que le capitaine D'Orsonnens se comportoit comme un officier, pendant qu'il a juré qu'il n'étoit qu'un simple individu. Je profiterai de cette occasion pour vous dire qu'il n'a pas paru à la Cour que le capitaine D'Orsonnens s'est compromis; point du tout.—Je fais cette mention de notre opinion, non pas pour guider la vôtre, mais parceque la Cour pense qu'elle le doit au capitaine D'Orsonnens, de dire que les circonstances que les conseils du prisonnier ont cru être contradictoires, n'ont pas paru ainsi à la Cour. Dans le même-tems, nous disons en-

"Kevény, I answered that he had been left upon an island;  
"that the Indian who had been given to us as a guide had him-  
"self left him there. Reinhard was in the canoe and might  
"perhaps have heard what was said on shore. Mr. Archy struck  
"me with the perch of a canoe. La Pointe ran away into the  
"woods, but Mr. Archy made him tack about, and beat him  
"likewise, saying that it was not our business."

core, que c'est à vous de juger. L'évidence du capitaine D'Orsonnens dans cette partie du cas, est confirmée par monsieur Nolin, qui dit sur son transquestionné, "qu'il ne croit pas que le capitaine D'Orsonnens étoit au service de la Compagnie de la Baie d'Hudson, mais qu'il étoit là pour voir le pays, comme compagnon de Milord Selkirk, comme l'ami de Milord." Une autre circonstance que le prisonnier a mis en preuve est, la capitulation faite avec monsieur Dease par le capitaine D'Orsonnens. Le capitaine D'Orsonnens a juré que cette capitulation étoit exigée par les circonstances particulières du pays d'en haut, autant que celles qui regardoient lui-même et ses gens. Il y a encore d'autre témoignage que le prisonnier dit être bien important. C'est l'évidence du capitaine D'Orsonnens, de La Bissonniere, et de Chrétien, au sujet du fort de Lac la Pluie, et de l'intention du capitaine D'Orsonnens de le prendre avant qu'il est parti de Fort William. Le capitaine D'Orsonnens a dit, "qu'il n'avoit aucune intention, ni aucun ordre de qui que ce soit, de prendre le fort de Lac la Pluie." La Bissonniere, un témoin du prisonnier, dit au contraire, qu'il a parlé de prendre le fort avant qu'il est parti de Fort William, et il récite la conversation dans laquelle le capitaine D'Orsonnens a dit (suivant ce que le témoin a raconté,) qu'il pouvoit bien prendre le fort du Lac la Pluie, sans danger, "mes gens sont fûtes, et j'ai des canons." Au sujet de ces canons il y a beaucoup de différence entre le témoignage du capitaine D'Orsonnens et celui de La Bissonniere et Chrétien, et le prisonnier dit, par ses avocats, qu'il y a beaucoup de contradiction dans le témoignage du capitaine D'Orsonnens, sur son examen en chef, et son transquestionné. La Bissonniere en parlant des canons a dit, "j'ai vu partir le capitaine D'Orsonnens

" avec ses gens pour le Lac la Pluie. J'ai vu  
 " deux pièces de canons qu'il amena avec lui.—  
 " Elles étoient montées sur des roues. Elles appar-  
 " tenoient à la Compagnie du Nord Ouest, et  
 " avoient été prises à Fort William aux coins de  
 " leur grande maison." Dans son transquestionné  
 il a dit la même chose ; " Quand le capitaine  
 " D'Orsonnens a parti pour le Lac la Pluie, les  
 " canons étoient embarqués, et ils étoient déjà  
 " montés." Chrétien, en parlant de cette circon-  
 stance, dit, " Dans le tems que j'étois dans la  
 " tente au portage du Lac la Pluie, j'ai vu de-  
 " barquer deux pièces de canons de cuivre mon-  
 " tés sur leurs affûts au camp du capitaine D'Or-  
 " sonnens. J'avois auparavant vu ces deux pièces  
 " de canons sur la barque de Fort William, et je  
 " les ai bien reconnu." Sur ce sujet le capitaine  
 D'Orsonnens a dit, " Je n'avois point de canons  
 " montés qu'après la déclaration faite par De  
 " Reinhard. Monsieur Vitchie m'a apporté deux  
 " petites pièces le cinquième ou le sixième d'Oc-  
 " tobre." Il a dit cela sur son transquestionné.  
 Sur son examen en chef, il a juré ; " Nous avons  
 " passé par le Fort William, nous avions des ca-  
 " nons, mais pas montés ni aucuns grémens pour.  
 " Ils étoient destinés pour la Rivière Rouge pour  
 " la défense de la colonie." Voilà la différence  
 entre l'évidence des témoins de la part de la Cou-  
 ronne, et de la part du prisonnier, et aussi la dif-  
 férence apparente entre celle du capitaine D'Or-  
 sonnens sur son examen en chef et sur son trans-  
 questionné. C'est à vous, nous devons encore dire, de  
 juger, mais peut être la différence apparente du té-  
 moignage du capitaine D'Orsonnens se trouvera re-  
 conciliée quand nous considérons que le capitaine  
 D'Orsonnens parle toujours de la déclaration de  
 De Reinhard, c'est à dire son témoignage porte  
 qu'un événement se présentait avant, ou après, sa

déclaration, ainsi en parlant de ces canons, il dit, "qu'il n'avoit pas des canons *montés* qu'après "la déclaration de De Reinhard." A l'égard de la différence entre le capitaine D'Orsonnens et les témoins du prisonnier, c'est votre province de dire à que vous donnerez la croyance. Une autre circonstance que les conseils du prisonnier ont plaidé, est que les Meurons l'avoient influés de faire sa confession au capitaine D'Orsonnens, et que son esprit n'étoit pas libre. Mais, je plains, que cette circonstance ne l'aidera pas, parceque tout les témoins s'accordent que les Meurons ne sont pas arrivés avant sept heures du soir, et sa déclaration a été faite à deux ou trois heures de l'après midi, ou au plus tard à quatre heures. Encore une circonstance en faveur du prisonnier se trouve dans l'évidence de monsieur Coltman. Il étoit très proche des États Unis, si proche que monsieur Coltman dit qu'il avoit de la crainte qu'il échapperait, mais il n'a pas fait aucun effort d'échapper. Il a, messieurs, le droit d'être estimé, non pas coupable, jusqu'au moment que vous êtes satisfaits, et que vous dites, par votre rapport, qu'il est coupable. Pour nous mettre en état de dire s'il est coupable, on non coupable, vous peserez bien le témoignage de l'un et de l'autre côté. Si, quand vous l'avez considéré, vous mettez ses confessions à côté, et avec elles les évidences de Faye et La Pointe, vous direz qu'il n'est pas coupable. Au contraire, messieurs, si vous ne voyez pas un fondement assez fort pour satisfaire vos consciences que c'est de votre devoir de mettre hors de votre croyance, et sa confession et l'évidence du capitaine D'Orsonnens, de Faye, et de la Pointe; je dis si vous êtes convaincus, d'après sa confession et les autres témoignages, que le prisonnier est de tout coupable, il faut que je vous dise qu'il est coupable du crime de meurtre. Le témoignage

n'a présenté aucune excuse pour le prisonnier. Le crime, supposé que vous le trouvez avoir été commis, est le crime de meurtre, et de meurtre seulement. Les circonstances de son cas ne vous ont pas laissé le pouvoir de diminuer le crime jusqu'à aucun autre degré de homicide. Il n'est pas possible de dire que c'est *manslaughter*, ni aucun autre crime que celui de meurtre.

Messieurs, à présent vous aurez à exercer vos jugemens sur le témoignage entier qui a été donné de la part de la Couronne, et de la part du prisonnier, et, en le faisant cette Cour ne vous demande pas de donner plus d'attention que nécessaire à ce qui je vous ai adressé pour vous conduire aux faits et circonstances du cas sur lesquels vous avez à déterminer entre la Couronne et le prisonnier. Tout et chaque verdict doit être le verdict des jurés assermentés pour le rendre. Réfléchissez sur votre devoir au prisonnier, mais n'oubliez pas que vous en devez un au communauté en général. Donnez une attention la plus sérieuse à l'entier du témoignage qui a été rendu dans ce long et très important procès, et quand vous l'avez pesé avec délibération et que vous avez satisfait à vos consciences, vous donnerez un verdict qui conviendra également à l'honneur et à la religion. Un verdict après lequel vous pourrez dire, nous avons fait une vraie délivrance entre notre Souverain Seigneur le Roi et le prisonnier Charles De Reinhard, et nous avons donné un verdict vrai, conformément au témoignage et à nos serments.<sup>(21)</sup>

(21) The difference between this evidence, and that which he gave before, is this. In March term he said that the conversation took place *after* he had embarked in the canoe, and now you hear he swears that it was on shore, and *before* embarking. If you consider the contradiction so great as to destroy his testimony, to make you wholly doubt his truth, then, you will place no belief in it. There are other circumstances which

*The jury then retired ; after they had been out of Court about an hour, a message was sent to them to enquire if it was likely that they would soon agree, the answer being in the negative, the Court adjourned till 7 o'clock, P. M.*

*Friday Evening, 7 o'clock.*

PRESENT AS BEFORE.

*About half-past seven the jury entered the Court and were called over and they being all present.*

*Officer of the Court.—Messieurs, êtes vous d'accord sur votre verdict ?*

*Jury.—Oui, monsieur.*

*Officer.—Qui parlera pour vous ?*

*Jury.—Monsieur Levallé, notre président.*

the prisoner, with much reason, says are very important to him. In the first place, he says that Joseph Fils de Perdrix Blanche, is not produced on the part of the Crown, and that he had reason to expect him, because he was taken by the commissioner for the Indian territories, in pursuance of the proclamation of his royal highness the Prince Regent, for the purpose, as he understood, of being a witness in this cause, and Mr. Coltman confirms this. Another circumstance is this. He says that captain D'Orsonnens acted like an officer, whilst he himself swore that he was no more than a simple individual. I will avail of this opportunity to state to you that it has not appeared to the Court that captain D'Orsonnens has committed himself, not at all, I make this mention of our opinion, not to direct your's, but because the Court thinks it due to captain D'Orsonnens, to say that those circumstances, which the prisoner's counsel believe to be contradictory, have not appeared in that light to the Court. At the same time, we say again that it is you who are to judge. The evidence of captain D'Orsonnens as to that part of the case, is confirmed by Mr. Nolin, who says, upon his cross-examination, " that he does not believe that captain D'Orsonnens was " in the service of the Hudson's Bay Company, but that he was " there to see the country, as a companion to my Lord Selkirk,

*Officer.*—Regardez le prisonnier. Comment dites vous, est-il coupable du meurtre et félonie de la manière et forme dont il est chargé dans l'indictement, ou non coupable?

*Levallé.*—Suivant le témoignage qui a été rendu,

"as a friend of my Lord's. Another circumstance which the prisoner has put in proof is the capitulation made between Mr. Dease and captain D'Orsonnens. Captain D'Orsonnens has sworn that this capitulation was required by the particular circumstances of the interior country, as well as by such as regarded himself and his people. There is some other evidence which the prisoner says is very important. It is the evidence of captain D'Orsonnens, of La Bissoniere, and of Chretien, on the subject of Fort Lake la Pluie, and of the intentions of captain D'Orsonnens to take it before he left Fort William. Captain D'Orsonnens says, "that he had not any intention nor any orders from any one whomsoever, to take the fort of Lake la Pluie." La Bissoniere, one of the prisoner's witnesses, says, on the contrary, that he spoke of taking the fort before he left Fort William, and he relates the conversation in which captain D'Orsonnens, as the witness tells us, said that he could easily take the fort of Lake la Pluie, without danger, "my people are clever fellows, and I have cannon." On the subject of these cannon there is a good deal of difference between the testimony of captain D'Orsonnens and that of La Bissoniere and Chretien, and the prisoner, by his counsel, says there is a good deal of contradiction in captain D'Orsonnens' own testimony upon his examination in chief, and his cross-examination. La Bissoniere, speaking of the cannon says, "I saw captain D'Orsonnens go away, with his people, for Lake la Pluie. I saw two pieces of cannon which he took with him. They were mounted on wheels; they belonged to the North West Company, and had been taken at Fort William from the corners of their large house." In his cross-examination he says the same thing; "when captain D'Orsonnens went away for Lake la Pluie, the cannon were embarked, and they were ready mounted." Chretien, speaking of this circumstance, says, "At the time when I was in the tent at the portage of Lake la Pluie, I saw two pieces of brass cannon, mounted upon their carriages, landed at captain D'Orsonnens' camp. I had before seen these two pieces of cannon on the vessel of Fort William, and I recollected them well." On this subject captain D'Orsonnens says, "I had no cannon mounted till after De Reinhard's declaration had been made. Mr. Vitche brought me two small pieces, on the fifth or sixth of October."



nous le trouvons coupable d'avoir assisté dans le meurtre, selon le huitième chef.

*Chief Justice Sewell.*—Messieurs, j'ai pris la précaution ce matin de vous dire, si vous vous en rappelez, que votre devoir étoit de dire, s'il (le pri-

He said that on his cross-examination. On his examination in chief he swore, "We went by the way of Fort William; we had cannon, but not mounted, nor any materials for so doing." They were intended for Red River, for the defence of the "colony." This constitutes the difference between the evidence for the Crown, and that on the part of the prisoner, and also the apparent variation between that of captain D'Orsonnens on his examination in chief, and his cross-examination. It is for you, we must say again, to judge, but perhaps the apparent variation in captain D'Orsonnens' testimony may be reconciled when we consider that captain D'Orsonnens always speaks of De Reinhard's declaration, that is to say, his evidence relates an occurrence as happening before or after, his declaration; thus, when speaking of these cannon he says "that he had not any cannon mounted till after De Reinhard's declaration." With regard to the variation between captain D'Orsonnens and the witnesses for the prisoner, it is your province to say to whom you will give credence. Another circumstance which the prisoner's counsel have pleaded is, that the Meurons had influenced him to make his confession to captain D'Orsonnens, and that his mind was not free. But I fear that this circumstance will not avail him, because all the witnesses agree that the Meurons did not arrive till seven o'clock in the evening, and his declaration was made at two or three o'clock in the afternoon, or, at the latest, at four o'clock. Yet another circumstance in favour of the prisoner occurs in the evidence of Mr. Colman. He was very near the United States, so near that Mr. Colman says he was apprehensive he might escape, but he did not attempt to escape. He is entitled, gentlemen, to be considered as not guilty, until the moment when you are satisfied and that you say, by your verdict, that he is guilty. To enable you to say whether he is guilty or not guilty, you will weigh well the evidence on one side and the other. If, when you have considered it, you set his confessions aside, and with them the evidence of Faye and La Pointe, you will say that he is not guilty. On the contrary, gentlemen, if you do not perceive sufficient grounds to satisfy your conscience that it is your duty to discard from your belief, as well his confession, as the evidence of captain D'Orsonnens, of Faye, and of La Pointe; I say, that if you are convinced, according to his confession and the other

sonnier) est qu'il n'est pas coupable du crime de meurtre; parcequ'on ne vous a pas laissé le pouvoir de diminuer le crime à aucun autre degré d'homicide; s'il est de tout coupable suivant cet indictment il est coupable du crime de meurtre, et de meurtre seulement. Et si vous le trouvez coupable comme aidant, assistant, encourageant, et étant présent, vous le trouvez en effet coupable du crime de meurtre selon le quatrième chef aussi bien que le huitième.

*Levallé.*—Nous le trouvons coupable sur le huitième.

*Chief Justice Sewell.*—Et le quatrième aussi? Que dites vous?<sup>(22)</sup>

evidence, that the prisoner is at all guilty, I am bound to tell you that he is guilty of the crime of murder. The evidence does not prove any excuse for the prisoner. The crime, supposing you find that it has been committed, is the crime of murder, and of murder alone. The circumstances of his case have not left you the alternative of reducing the crime to any other degree of homicide. It is not possible to say that it is manslaughter, nor any other crime than that of murder.

Gentlemen, you must now exercise your judgement upon the whole evidence which has been given both on the part of the Crown, and on the part of the prisoner, and in doing so the Court does not require from you to pay more than the necessary attention to what I have stated to you relative to the facts and circumstances of the case between the Crown and the prisoner upon which you have to decide. Every and each verdict ought to be the verdict of the jury sworn to return it. Reflect upon what you owe to the prisoner, but do not forget what you owe to the community at large. Pay the most serious attention to the whole of the evidence which has been laid before you in this long and very important trial, and when you have weighed it with deliberation, and you have satisfied your consciences, you will return a verdict, equally consonant to honour and to religion. A verdict after which you may say, we have made a true deliverance between our sovereign Lord the King and the prisoner, Charles De Reinhard, and we have rendered a true verdict, conformably to the evidence and to our oaths.

<sup>(22)</sup> *Officer.*—Gentlemen, are you agreed upon your verdict?  
*Jury.*—Yes, Sir.

*Mr. Stuart.*—I beg the Court that their own verdict may be taken and entered just as they give it.

*Chief Justice Sewell.*—Mr. Stuart, we must not enter a verdict contrary to law. We can not enter a contradictory verdict. It is impossible.

*Mr. Stuart.*—There is no danger of such a one being returned, if the jury's understanding of the offence is taken. After the length of time, the subject has been under their consideration, they certainly must comprehend of what they intend to convict him, and it is their province to say what they do intend.

*Mr. Justice Bowen.*—You would not certainly expect us to permit them to convict on one count, and acquit on another, when the two are precisely the same? What would be the consequence of so doing? They would directly contradict themselves, and the verdict would be void.

*Mr. Stuart.*—I have nothing to do with conse-

*Officer.*—Who shall speak for you?

*Jury.*—Mr. Levallé, our foreman.

*Officer.*—Look at the prisoner. How do you say? Is he guilty of the murder and felony; in the manner and form in which he is charged in the indictment, or not guilty.

*Levallé.*—According to the evidence which has been given, we find him guilty of assisting in the murder, upon the eighth count.

*C. J. S.*—Gentlemen, I took the precaution of telling you this morning; if you recollect, that your duty would be to say whether he (the prisoner) is or is not guilty of the crime of murder, because the alternative was not left to you of reducing the crime to any other degree of homicide; if he be at all guilty according to the indictment, he is guilty of the crime of murder, and of murder alone. And if you find him guilty of aiding, assisting, encouraging, and being present, you, in effect, find him guilty of the crime of murder, upon the fourth count as well as the eighth.

*Levallé.*—We find him guilty upon the eighth.

*C. J. S.*—And the fourth also; how say you?

quences, all I ask is that the verdict of the jury may be taken as they give it.

*Chief Justice Sewell.*—We will not take a contradictory verdict, Mr. Stuart. We can not.

*Mr. Stuart.*—I presume that your honours will take the verdict such as the jury gave it, which is all we are asking.

*Here some of the jury spoke.*

*Chief Justice Sewell.*—Messieurs, vous ferez mieux de vous retirer, et de considerer votre verdict de nouveau.

*Mr. Levallé.*—Nous considerons le prisonnier, suivant le témoignage que nous avons entendu, comme coupable en assistant Mainville qui commettoit le meurtre, et nous le trouvons coupable sur le huitième chef.

*Mr. Justice Bowen.*—Vous n'êtes donc pas d'accord, messieurs; car si vous le trouvez coupable d'avoir été présent, aidant, &c. Mainville, assurément vous le trouvez coupable sur le quatrième chef dans l'indictement, qui raconte cette charge, et si vous entendez le quatrième chef, vous appercevrez que ce chef charge Mainville d'avoir tué Keveny, le decédé, avec un fusil, et De Reinhard d'avoir été alors présent, aidant, assistant, &c. Le huitième chef, messieurs, charge encore le prisonnier du même crime, et dans le même degré selon la loi. La seule différence entre les deux chefs est celle-ci, par ce chef le crime est diminué à l'égard des autres personnes accusées mais non pas à l'égard du prisonnier, et c'est à lui seulement qu'on fait maintenant le procès, vous ne pouvez donc pas dire que le prisonnier soit coupable sur le huitième chef, et non pas sur le quatrième, parcequ'ils sont tous deux les mêmes.

*Chief Justice Sewell.*—Oui, messieurs, c'est le cas. Les mots de l'un et de l'autre chef sont tout à fait les mêmes, le quatrième et le huitième chef

sont entièrement, en autant que le prisonnier y est intéressé, les mêmes, et c'est pourquoi nous vous prions de considérer votre rapport de nouveau, parceque si vous dites que vous le trouvez coupable du huitième chef, et que vous dites en même tems qu'il n'est pas coupable de l'autre, c'est une contradiction manifeste, puisque le quatrième est précisément le même que le huitième.<sup>(23)</sup>

*Mr. Stuart.*—The verdict of the jury, and which I beg may be taken as they give it, is that the prisoner is guilty on the eighth count, and not on the others.

*Chief Justice Scwell.*—They can not say that, Mr. Stuart, it would be a direct contradiction. What would be the consequence of such a verdict?

<sup>(23)</sup> *C. J. S.*—Gentlemen, you will do better to retire, and reconsider your verdict.

*Levallé.*—We consider the prisoner, according to the evidence we have heard, as guilty of assisting Mainville, who committed the murder, and we find him guilty on the eighth count.

*Mr. J. B.*—You are not then agreed, gentlemen; for if you find him guilty of having been present, aiding, &c. Mainville, assuredly you must find him guilty on the fourth count of the indictment, which recounts that charge, and if you understand the fourth count, you will perceive that that count charges Mainville with having killed Kevény, the deceased, with a gun, and De Reinhard with having been then present, aiding, assisting, &c. The eighth count, gentlemen, again charges the prisoner with the same crime, and in the same degree in law. The only difference between the two counts is this, by this count the crime is reduced, as regards the other persons accused, but not as regards the prisoner; and it is he only who is now on his trial, you can not therefore say that the prisoner is guilty upon the eighth count, and not upon the fourth, because they are both the same.

*C. J. S.*—Yes, gentlemen, that is the case. The words of one and the other count are entirely the same, the fourth and the eighth counts are wholly, as far as the prisoner is concerned, the same, and it is therefore we request you will reconsider your verdict, because if you find him guilty on the eighth count, and you say at the same time he is not guilty upon the others, it is a manifest contradiction, for the fourth is precisely the same as the eighth.

*Mr. Stuart.*—We have nothing to do with consequences; that is the verdict.

*Chief Justice Sewell.*—But we have, and a great deal too. We will not take such a verdict. We can not receive it.

*Mr. Justice Bowen.*—We can not, Mr. Stuart.

*Mr. Stuart.*—Am I then to understand that the Court refuse to receive the verdict.

*Chief Justice Sewell.*—Certainly, Mr. Stuart, we do refuse. You ask us, in the face of all the world, to let a jury say that Mainville did with a gun kill Owen Keveny, De Reinhard being present, aiding, assisting, encouraging, and counselling the murder, and at the same time to let them also say that he did not kill him, and that he was not so present. The thing is absurd.

*Mr. Justice Bowen.*—You certainly do not suppose that we can let a jury say yes and no in the same verdict, and upon the same fact.

*Mr. Vanfelson.*—Je pense, s'il plait à la Cour.<sup>(24)</sup>

*Chief Justice Sewell.*—Mr. Vanfelson, we want no assistance in entering the verdict, neither will we withhold the least particle of justice from the unfortunate prisoner, not the smallest you may be assured of it.

*Mr. Stuart.*—All we ask is to have the verdict, such as it is given by the jury, taken. We humbly conceive it is their province to give it, and our privilege to have that verdict, be it what it may, entered on record. What may be the consequence hereafter I have nothing to do with, I only want the verdict as they gave it by their foreman.

*Chief Justice Sewell.*—They have not given one, Mr. Stuart; they are not agreed. A juryman behind said they were not agreed.

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(24) In think, if it please the Court ———

*Mr. Stuart.*—Then they had better retire, they said they had agreed when asked by the officer of the Court.

*Chief Justice Sewell.*—Let the fourth and eighth counts to be read to the jury, that part of them, which relates to the prisoner. Et messieurs les jurés, je vous prie de donner votre attention à la lecture du quatrième et du huitième chef de l'indictement.<sup>(25)</sup>

*Mr. Stuart.*—If any part is read, I should wish the whole.

*Chief Justice Sewell.*—No, Mr. Stuart; the fourth and eighth counts are quite sufficient. Read the fourth Mr. D'Estimauville.

*The fourth count was then read as far as related to the prisoner.*

*Mr. Stuart.*—I wish to enquire if the whole count has been read?

*Chief Justice Sewell.*—It has all been read which relates to the prisoner, which is quite sufficient.

*Mr. Stuart.*—If any part is read, I should wish the whole.

*Chief Justice Sewell.*—What, the whole of the indictment, do you mean, or what? We are not trying the accomplices, it therefore can not be requisite to read more than what relates to the prisoner. Afterwards you may have it read a dozen times if you think proper, but do let us now understand what relates to this prisoner. Read the eighth count, as it respects De Reinhard.

*The whole of the eighth count was then read.*

*Mr. Stuart.*—I hope your honours will lay down the law to the jury on the doctrine of accessory before and after the fact, as probably they have not

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<sup>(25)</sup> And, gentlemen of the jury, I beg you will pay attention to the reading of the fourth and eighth counts of the indictment.

clearly comprehended the application of a point of law to the evidence.

*Chief Justice Sewell.*—There is no such charge in the indictment as that of accessory before or after the fact against De Reinhard, and therefore there can be no necessity of explaining the law to the jury on a point not involved in this case. The verdict against De Reinhard can not be manslaughter, or any diminished homicide. The charge against him is murder, and murder only.

*Mr. Stuart.*—I know it; but the intention of the jury in the verdict which they returned would, had it been entered, have appeared. It was not to find him guilty of murder, but of being accessory.

*Solicitor General.*—They can not find such a verdict, for as your honours have remarked there is no charge against the prisoner, but that of murder.

*Chief Justice Sewell.*—I will not certainly permit the jury to say the prisoner is guilty of any other crime than that of murder which is charged, but I will enter a verdict of not guilty, if returned by the jury, with the greatest pleasure.

*Mr. Stuart.*—I humbly submit that there could be no impropriety in your honours explaining to the jury the application of the principle of an accessory before and after the fact, inasmuch as, from the verdict offered by the jury, it is evident they were about finding him so, and what the effect of their so finding would be, I humbly contend, is not a question for our consideration at the present moment. They are to give a verdict, and as it is to be *their* verdict, I submit we are bound to receive it, without enquiring what may or may not be the consequences of that verdict.

*Chief Justice Sewell.*—The law upon the subject of accessory before or after the fact is so clear



that there can be no misunderstanding upon the subject, and it is equally clear that, in no point of view, does it apply to this unfortunate man. An accessory antecedent to the commission of the offence, becomes so by aiding, proposing, counselling, encouraging, or by any acts which may have direct tendency to excite to the perpetration of crime. An accessory after the offence is committed, becomes so by receiving the felon, aiding his escape, or any other conduct the tendency of which is, to shield the perpetrator of the crime, or enable him to escape the course of justice. Those are principles of law. This indictment states to us a fact, namely, that De Reinhard, of malice aforethought, killed the deceased, or was present, aiding and assisting another in the act, and the law, in either of the cases, constitutes such a charge, a charge of murder, and of murder only.

*Mr. Vanfelson rose, but was not permitted to address the Court.*

*Chief Justice Sewell*—Messieurs, vous ferez mieux de vous retirer.

*Mr. Levallé*.—Mainville, commençoit à commettre le meurtre, et De Reinhard étoit présent et l'assistant. C'est mon rapport, et le rapport de mes frères, suivant le témoignage comme nous l'avons entendu, et nous ne rendrons point d'autre.

*Chief Justice Sewell*.—C'est à dire, messieurs, qu'il est coupable sur le quatrième et le huitième chef?

*Mr. Levallé*.—C'est la même chose.<sup>(20)</sup>

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<sup>(20)</sup> *C. J. S.*—Gentlemen, you will do better to retire.

*Levallé*.—Mainville began to commit the murder, and De Reinhard was present and assisting him. This is my verdict, and the verdict of my colleagues, according to the evidence we have heard, and we will return no other.

*Chief Justice Sewell.*—Let it be entered of record, Mr. Waller, that he is guilty of the felony and murder whereof he is accused, in manner and form as he stands charged in the indictment upon the fourth and eighth counts, and not guilty on the rest.

*Clerk of the Crown.*—Gentlemen of the jury, hearken to your verdict, as the Court have recorded it. You say that you find Charles De Reinhard guilty of the felony and murder of which he is accused, in manner and form as he stands charged in the fourth and eighth counts of the indictment, and so you say all.

*Mr. Trahan, (a juror.)*—Non, non pas sur les deux chefs.

*Chief Justice Sewell.*—Il faut, messieurs, que vous soyez tous d'accord, il vaut mieux de vous retirer.

*Mr. Levallé.*—Le juré dit qu'il n'avoit pas bien entendu la lecture des chefs, c'est-à-dire le quatrième.<sup>(27)</sup>

*Chief Justice Sewell.*—It shall be read again, gentlemen. Read the fourth count again, Mr. D'Estimauville, that part of it which relates to De Reinhard.

*The fourth count was then read as it related to De Reinhard.*

*Chief Justice Sewell.*—L'avez vous bien entendu, vous, monsieur, qui auparavant ne l'avoit pas entendu.

*C. J. S.*—That is to say, gentlemen, that he is guilty upon the fourth and the eighth counts.

*Levallé.*—It is the same thing.

<sup>(27)</sup> *Mr. Trahan.*—No, not on the two counts.

*C. J. S.*—Gentlemen, you must be all agreed, you had better retire.

*Levallé.*—The juror says that he did not well hear the reading of the counts, that is of the fourth.

*Mr. Trahan.*—Oui, vos honneurs.

*Chief Justice Sewell.*—Entendez donc à présent la lecture du huitième chef, et voyez si vous y trouvez la moindre différence. Ils sont, messieurs, tout à fait les mêmes, en autant que le prisonnier y est intéressé.<sup>(21)</sup>

*The eighth count was then read.*

*Mr Stuart.*—I wish to ask if the whole of the fourth count was read. If the jury are to find on that count, it should certainly be all read to them.

*Chief Justice Sewell.*—All that relates to the prisoner has been read, Mr. Stuart; that part which has been omitted relates solely to the accessories, and there can be no need to read it, to enable the jury to decide on the guilt or innocence of this prisoner.

*Mr. Stuart.*—That is nothing to me, if the jury are called on to find on a count, they ought to hear it read.

*Mr. Justice Bowen.*—It is most extraordinary that when we are engaged on the trial of De Reinhard, upon an indictment for murder, that it can be of any consequence to read to the jury, a charge against four others, who are charged as being accessories. They have chosen to have separate trials, and now we must sever the counts and charges, as they respect them. The counts now in discussion contain two charges, what relates to the prisoner has been read, the whole of what has reference to him has been read, indeed the whole of the charge, which to the prisoner is the same as a count,

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<sup>(22)</sup> *C. J. S.*—Have you now rightly heard it, you, Sir, who before did not.

*Mr. Trahan.*—Yes, your honours.

*C. J. S.*—Listen then now to the reading of the eighth count, and see if you perceive the least difference in them. They are, gentlemen, entirely the same, as far as the prisoner is concerned.

*Mr. Stuart.*—The count, if I comprehend the term, contains a charge, but a charge is not precisely the same thing as a count. I beg again to repeat, very respectfully, to the Court that all I ask is that, if the jury are to find on a count, they may hear it read. indeed I know of no right that exists, to keep any part from them.

*Chief Justice Swell.*—What is it, Mr. Stuart, that you propose to effect by having it read? What do you wish or mean to have read?

*Mr. Stuart.*—I mean, with great deference to the Court, to contend that the whole of the fourth count should be read, and that the officer of the Court had no right to keep back any part of it.

*Solicitor General.*—Your honours must perceive that the object of all this is merely to distract the attention of the jury. My learned friend can not propose to himself any other object by this course. What have the charges against McLellan and others to do with De Reinhard?

*Mr. Stuart.*—All I mean is to ask that the whole count may be read. The Court will take such a course as they think proper. I feel it my duty to ask it.

*Solicitor General.*—I contend, may it please the Court, there are no reasons whatever for granting the application; the present is not like a formal reading, such as at the arraignment of a prisoner, it is merely for the information of the jury. I trust, for the sake of regularity, not that we can have any objection, from any effect the reading might produce, but solely from a desire to proceed regularly. I trust that the Court will not consider it necessary to grant this application.

*Mr. Justice Bowen.*—If any important point, or material averment, was contained in the remainder of the count, which it was necessary for this jury to understand, I should be clearly of opinion that

it ought to be granted, but I really can not see the necessity or propriety of such reading.

*Chief Justice Sewell.*—What good it is to produce I know not, but let it be read.

*Attorney-General.*—I submit, may it please the Court ———

*Chief Justice Sewell.*—No, Mr. Attorney-General. Pray let it be read.

*Mr. Justice Bowen.*—I do not see any benefit that is to arise from it, but if it is the Chief Justice's wish, I have no objection to its being read.

*Mr. Stuart.*—My reason for urging its reading is that, if the jury are to find on it, not one word of it ought to be omitted.

*Chief Justice Sewell.*—The eighth count has been read without a word being omitted; not even a name.

*Mr. Stuart.*—I do not complain of that. It is the fourth.

*Chief Justice Sewell.*—Then you want the names of the accomplices read, for in fact there is only that remains to be read.

*Mr. Stuart.*—I do not know what may remain, I want the whole read, be it what it may.

*The fourth count was then read throughout.*

*Prisoner.*—Monsieur D'Estimauville, avez vous fini avec cette instigation du diable? (to the Court.) Voulez vous me permettre de parler un peu des mots? <sup>(20)</sup>

*Chief Justice Sewell.*—Certainly, yes.

*Prisoner.*—Je suis mortifié d'entendre l'indictement, il paroîtroit d'être au commencement. Je pensois qu'il auroit été fini. C'est assez long à present, dix jours, et je suis mortifié, bien mortifié, qu'il fesoit plus long, par lisant l'indictement.

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<sup>(20)</sup> Mr. D'Estimauville, have you finished with this instigation of the devil? (to the Court.) Will you permit me to say a few words.

*Mr. Levallé.*—Nous le trouvons coupable sur le huitième indictement, c'est-à-dire, le huitième chef.<sup>(30)</sup>

*Chief Justice Sewell.*—What do you say to the fourth then, which is the first in order, and precisely the same as the eighth?

*Mr. Stuart and Mr. Vanfelson.*—We hope the verdict will be taken as they give it.

*Chief Justice Sewell.*—Gentlemen, you must let us understand what they intend to say, before we can record their verdict. I only want to know, what, in point of fact they do say, so that I may enter it, if it is a verdict according to law.

*Mr. Levallé.*—Nous le trouvons coupable sur le huitième chef, d'assistant —

*Chief Justice Sewell.*—Nous vous prions de vous retirer. C'est un verdict contradictoire, et nous ne pouvons pas le recevoir.

*A Juror.*—Il est inutile de me retirer, c'est mon verdict, et je ne donnerai pas d'autre, si je mourerois de faim.

*Chief Justice Sewell.*—Si vous voulez m'entendre pour un moment, je vous en expliquerai. Par ce rapport, vous dites, sur vos serments, qu'il est coupable sur le huitième chef, et vous dites aussi, sur vos mêmes serments, qu'il n'est pas coupable sur tous les autres; dire cela est contradictoire, parceque le quatrième et le huitième sont les mêmes, précisément les mêmes, tout à fait, mot pour mot.<sup>(31)</sup>

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*(30) Prisoner.*—I am mortified to hear the indictment, it would seem to be at the beginning. I thought it would have been finished. It is long enough as it is, ten days, and I am mortified, much mortified, that it would be made longer by reading the indictment.

*Levallé.*—We find him guilty on the eighth indictment, that is, the eighth count.

*(31) Levallé.*—We find him guilty on the eighth, of assisting.—

*The jury then retired and shortly after returned into Court.*

*Officer of the Court.*—Messieurs, êtes vous d'accord sur votre verdict.

*Jury.*—Oui, monsieur.

*Officer.*—Qui parlera pour vous ?

*Jury.*—Monsieur Sasville.

*Officer.*—Regardez le prisonnier. Comment dites vous ? Est il coupable du meurtre et felonie de la manière et forme donc il est chargé dans l'indictement, ou non coupable ?

*Mr. Sasville.*—Il est coupable sur le quatrième et le huitième chef de l'indictement, et non pas coupables sur les autres <sup>(32)</sup>

*Chief Justice Sewell.*—Let it, Mr. Waller, be so entered of record.

*Clerk of the Crown, (by the Interpreter.)*—Gentlemen of the jury, hearken to your verdict, as the Court have recorded it. You say you find Charles De Reinhard guilty of the felony and murder whereof he is accused, in manner and form as he

*C. J. S.*—We request you will retire. It is a contradictory verdict, and we cannot receive it.

*A juror*—It is useless for me to retire, it is my verdict, and I will give no other, were I to die of hunger.

*C. J. S.*—If you will listen to me for a moment, I will explain to you. By this verdict, you say, upon your oaths, that he is guilty upon the eighth count, and you also say, upon your same oaths, that he is not guilty upon all the others ; to say so is a contradiction, for the fourth and the eighth are exactly alike, the same entirely, word for word.

<sup>(32)</sup> *Officer.*—Gentlemen, are you agreed upon your verdict.

*Jury*—Yes, Sir.

*Officer*—Who shall speak for you ?

*Jury*—Mr. Sasville.

*Officer.*—Look at the prisoner. How do you say ? Is he guilty of the murder and felony, in the manner and form in which he stands charged in the indictment, or not guilty ?

*Mr. Sasville.*—He is guilty upon the fourth and eighth counts of the indictment, and not guilty upon the others.

stands charged in the fourth and eighth counts of the indictment, and that he is not guilty of the remainder; and so say you all.

*Jury.*—Oui, monsieur.

*Chief Justice Sewell.*—L'entendez vous bien, messieurs?

*Mr. Sasville.*—Oui, votre honneur.

*Chief Justice Sewell.*—Messieurs, avant que vous retirez il faut que cette Cour vous fasse ses remerciemens; et non pas les remerciemens de la Cour seulement, mais aussi ceux du district entier, pour votre attention à ce cas. Messieurs, la Cour pour elle-même, et au nom du district, vous remercie très sincèrement, non seulement pour votre attention, mais pour la manière de laquelle, durant ce long procès, vous avez fait vos devoirs. Messieurs, vous êtes déchargés.<sup>(33)</sup>

*Attorney-General.*—I move for judgement against the prisoner.

*Clerk of the Crown.*—Charles De Reinhard, what have you to say why this Court should not proceed to judgement and execution against you?

*Mr. Vanfelson.*—S'il plait à la Cour, je me propose d'excepter au jugement par divers moyens: 1<sup>ment</sup>. Qu'une Cour d'Oyer et Terminer ne peut pas prendre connoissance dans la province du Bas Canada d'aucune offense commise dans les territoires Sauvages, ou si elle le pouvoit faire, ce n'est pas d'une *felonie*.

<sup>(33)</sup> *Jury* —Yes, Sir.

*C. J. S.*—Do you hear and understand it, gentlemen?

*Mr. Sasville* —Yes, your honours.

*C. J. S.*—Gentlemen, before you retire, the Court have to present you with its thanks, and not only the thanks of the Court alone, but those of the district at large, for your attention to this case. Gentlemen, the Court for itself, and in the name of the district, most sincerely thank you, not only for your attention, but for the manner in which you have performed your duty, during this long trial. Gentlemen, you are discharged.



2<sup>ment</sup>. J'objecte au rapport des jurés, parcequ'ils ont été permis de parler avec le monde au sujet de leur verdict. Nous produirons des affidavits que les jurés ont parlé avec des individus au sujet de ce procès.<sup>(34)</sup>

Another objection is that one of the individuals, under whose care the jury were placed, did speak to them himself, and allowed other persons to speak to them.

*Chief Justice Sewell.*—On the subject of this trial and their verdict?

*Mr. Vanfelson.*—Yes, your honours. Our affidavits will, I believe, go that length. There are other objections which my colleague, Mr. Stuart, will state more at large to the Court.

*Chief Justice Sewell.*—Then your objections, Mr. Vanfelson, are; one to a point clearly of law, and the two latter ones to the conduct of the jury and those who had the care of them.

*Mr. Vanfelson.*—Yes, they are part of our objections. My learned friend who is with me will, however, more fully state them to the Court.

*Mr. Stuart.*—We intend to submit to the Court, two motions, the one, in arrest of judgement, the other, for a new trial, and I shall state the grounds, upon which they will be supported. Our first step will be founded on the question of jurisdiction.

*Chief Justice Sewell.*—Do tell us, Mr. Stuart, on what grounds you intend to argue these motions.

(34) May it please the Court, I propose to except against the judgement, on divers grounds:

1st. Because a Court of Oyer and Terminer in the province of Lower Canada, can not take cognizance of any offence committed in the Indian territory, or if it could do so, still not of a felony.

2dly. I object to the verdict of the jury, because they have been allowed to converse with other people on the subject of their verdict. We shall produce affidavits that the jury have conversed with individuals on the subject of this trial.

You must be aware that the question of jurisdiction is done with. You can not intend to argue it again. We gave you our decision upon it, after a solemn argument, and the jury have given you theirs in their verdict. Do let us know the real, solid, legal grounds upon which you propose to discuss the motions, you have stated your intention of offering, the one in arrest of judgement, and the other for a new trial.

*Mr. Stuart.*—I will state them more explicitly to the Court. It was my intention and endeavour before, to let the Court know, not what I did *not* intend to argue, but that which (with great deference) I *did* intend, and I proposed to do so, because it was what I felt myself entitled to argue. If the Court differ with me, my duty is of course to submit. I will briefly state to your honours the course I propose to adopt, and it will include the grounds of objection submitted by my learned friend who is with me. My first objection goes to the question of jurisdiction, which, although considered by the Court to be a point upon which they have decided, I may perhaps be permitted to renew to a certain extent. I do not desire to go again into an extended argument on the subject, but I do hope that in an incidental manner I may be permitted, to a certain extent, to renew the consideration of the jurisdiction, as connected with the question of locality. I proceed to say

2ndly. That neither this Court, nor any other Court in Canada, has the right to try for *felonies*. Power is only given them, I contend, for the trial of misdemeanors.

3dly. Waiving the last objection, I submit that, if power to try for felonies is given to any, still it is only to such as are the *usual Courts*, and not to a Court of Oyer and Terminer.

My fourth objection will be, that two separate

returns of the jury have not been allowed by the Court to be taken, although, as I contend, the prisoner is entitled to have the verdict of a jury recorded, without any consideration of what the consequence of that verdict may be.

*Chief Justice Seawell.*—We can not allow that, Mr. Stuart. We must do our duty whether the Crown or the prisoner may be affected thereby. We can not suffer you to argue the propriety of our refusing to receive and record an illegal, because a contradictory, verdict. All that we said to the jury was this, if you find the prisoner guilty of being present, aiding, and assisting, François Mainville, to murder Owen Keveny, it must be, either upon the two counts that charge that crime, or if you find him guilty upon one count only, and not guilty upon the rest, then you must find him guilty upon the first which charges the offence, which is the fourth count, but we can not take such a verdict upon the eighth, because it would amount to an absurdity, involving in it a direct contradiction, as the fourth is verbatim the same, as far as the crime of the prisoner is set forth.—We can not, Mr. Stuart, permit you to argue upon the conduct of the Court relative to our refusal to record what was an illegal, because a contradictory, verdict.

*Mr. Stuart.*—I merely state my objections, and must of course bow to the authority of your honours. My next objection, waiving the former ones, (that no Court in Canada has power to try for a felony, or that, if any, it is only the *usual* Courts, and not a Court of Oyer and Terminer,) will be, that by the 43d of the king, cap. 138, it is only *subjects* of the king, committing “offences in the “Indian territories, or parts of America not within “the limits of either of the provinces of Upper or “Lower Canada; or any civil government of the

"United States of America," over whom the jurisdiction of this province is extended, and that, in the present case, the prisoner is not stated in the indictment nor have the Crown officers proved him, to be a British subject, and I might add that, in point of law, he is not so.

*Solicitor General.*—I beg to remark that it was not necessary for us to prove that he was a British subject, it was sufficient for us to shew that the offence was committed by the prisoner, and, by the act upon which he was indicted, if he had shewn that he was wrongfully or illegally indicted, he was entitled forthwith to his acquittal, but the *onus probandi* lies upon the prisoner.

*Chief Justice Sewell.*—Have you any further objections, Mr Stuart, to add to those you have already mentioned.

*Mr. Stuart.*—Misconduct on the part of the jury, and of the officers who had charge of them, during the time they were absent from Court. In mentioning this objection, I beg I may not be understood as intending any thing personal to the jury, very far from it, but I am given to understand, and I expect shall be able to substantiate the fact by affidavits, that the jury have been allowed to converse with persons on the subject of this trial, and the officer who had them in charge has himself held conversations on the subject with them. In reference to the gentleman thus alluded to (Mr. D'Estimauville,) I beg to remark that, as of course it must be under affidavit that this allegation must be sustained, we shall give him every information in our power as early as possible, so as to enable him to meet, and if he can, rebut the charge.

*Solicitor General.*—As it will, perhaps, be necessary to rebut the charge that we prepare counter-affidavits, I should wish some time to be ap-

pointed for us to receive those of the prisoner, that a suitable arrangement may be made for the discussion of the motives of which my learned friends have given notice; at present, it is impossible to fix a precise time, as we can not foresee to what extent the opposite side may carry their support of this charge.

*Mr. Stuart intimated, in answer to a question from the Court as to when the affidavits would be ready, that, as a number of persons would have to be seen by himself and colleagues on the subject, and from the late hour, could not be called on this evening, they could not be ready until about the middle of the next day. After some explanation between the Court and the counsel on both sides, the Court was ordered to be adjourned till 12 o'clock on Saturday, the 30th instant, and accordingly was so adjourned.*

*Saturday, 30th May, 1818.*

PRESENT AS BEFORE.

*Mr. Stuart.*—I rise to state to the Court that, upon investigation, we have found that the objection taken last evening to the conduct of the jury, and of the officer, under whose care they had been placed, was not capable of being supported by proof. The circumstances having been communicated to the prisoner's counsel they felt themselves bound, when directed by the Court to state their grounds of opposition, to include this, although they had not examined the evidence to sustain its validity. Since last evening, our enquiries have satisfied us that it is our duty to abandon the objection, which we now do. We feel, however, that we should be wanting to the gentleman (Mr. D'Estimauville) in whose care the jury were placed, after having for a moment ques-

tioned his conduct, if we did not thus publicly declare that he has most correctly fulfilled his duty as an officer of this Court, and that we were misinformed. For the argument we are not at present prepared, having been completely occupied in examining into the evidence by which it was supposed that the allegation just alluded to could be sustained, we therefore hope for the indulgence of the Court.

*After some conversation between the Court, the Crown officers, and the counsel for the prisoner, the Court was adjourned till Wednesday, 3d June, at 10 o'clock, A. M.*

*Wednesday, 3d June, 1818.*

*Chief Justice Sewell.*—Are you ready, gentlemen, to proceed with the argument?

*Mr. Stuart.*—My learned friend, Mr. Vanfelson, will open, and I shall have the honour to follow him, in support of our motion, for a new trial, and in arrest of judgement.

*Solicitor General.*—I beg leave to submit to the Court, whether it may not be a question whether your honours can entertain the motion of my learned friends, whether it is competent to the Court to receive a motion for a new trial in a case of felony. It will, perhaps, be a waste of time to enter upon a solemn argument upon the question till the competency of the Court to entertain the motion shall be decided. We are prepared with authorities to shew that a motion for a new trial can not be received.

*Chief Justice Sewell.*—There is a motion in arrest of judgment, upon which there can be no question they are entitled to be fully heard. The better and shorter course, I think, will be to let the prisoner's counsel proceed with their argu-

ment in support of their motion. We will hear them till they arrive at that part of it which may be thought objectionable, when they can be stopped, and the objection be heard. Any other course, I fear, will occupy more time, and present greater difficulties, than this apparently direct method. Hear the gentlemen so long as they keep within legal bounds, when they exceed them, they of course will be stopped. We will hear you, Mr. Vanfelson, as you are to open the argument upon the motion.

*Mr. Vanfelson.*—S'il plait à la Cour, nous aurons l'honneur de soumettre deux motions; la première pour un procès nouveau, et la seconde une motion en arrêt de jugement. Pour appuyer la première, il y a trois moyens; 1<sup>ment</sup>. Que la confession que la Cour a reçue du Docteur Allan, n'étoit pas une preuve légale contre le prisonnier, et ne devoit pas avoir été reçue.<sup>(35)</sup>

*Chief Justice Sewell.*—If I understand you correctly, the ground you take is that in receiving the confession of the prisoner, delivered to the Earl of Selkirk, in the presence of Doctor Allan, at common law, the Court proceeded irregularly.

*Mr. Vanfelson.*—With great deference to the Court, that is one of the points which we submit. The second is, misdirection to the jury by the Court, in as much as there was no proof that *Owen Keveny* was killed: I mean there was no proof of the baptismal name of Keveny, whether it was *Owen* or *Oliver*, or any other name, and the indictment charges it to be *Owen Keveny*, and it

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(35) May it please the Court, we shall have the honour to submit two motions; the first for a new trial, and the second, in arrest of judgement. To support the first, there are three grounds; 1<sup>st</sup>. That the confession which the Court received from Dr. Allan was no legal proof against the prisoner, and ought not to have been received.

was therefore incumbent on the Crown to have proved that it was *Owen Keveny* who had been killed; neither was there any proof given of the actual death of Keveny, which certainly was a necessary preliminary to conviction.

*Chief Justice Sewell.*—I must stop you, Mr. Vanfelson, but by this course, you are calling upon us to hear the cause again. You must confine your arguments to legal objections, and upon those we shall be happy to hear you fully, but your last objections to the not-proving the baptismal name of the deceased, and the want of positive demonstration of his death, are points that have been settled, and to revive them would be to try the cause again. You would not ask us to try the cause anew.

*Mr. Vanfelson.*—Non, vos honneurs. Nous aurons l'honneur de soumettre une motion pour un procès nouveau, et nous croyons qu'il n'est pas mal à propos que nous produirions tels arguments qui se présentent à nos esprits, soignant en même tems, qu'ils sont réguliers et conformes aux loix. Selon ce principe je sou mets, avec la plus grande consideration, à la Cour, que je n'ai pas proposé de faire plus que mon devoir au prisonnier exige, parceque ma proposition est fondée sur son droit, mais je crains que je n'ai pas bien expliqué mes propositions à la Cour. Je me propose de soumettre à la Cour que mes savans confrères, les avocats de la Couronne, n'ont pas prouvé deux choses, savoir, que Keveny a été actuellement tué, ni que c'est *Owen Keveny* qui est mort. Je prends aussi la liberté de représenter que nous considérons la confession de De Reinhard qui a été admise par la Cour, comme une preuve inadmissible.<sup>(38)</sup>

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(38) No, you honours. We shall have the honour to submit



*Chief Justice Sewell.*—You wish us to hear you upon two points already solemnly decided. One of them by the Court, and the other by the jury. One of them is a matter of fact found by the jury, to wit: that *Owen Keveny* is dead, having been killed by *François Mainville*, the prisoner *Charles De Reinhard* being present, aiding and assisting, to perpetuate the murder, and as to the other, the matter of law, you know, *Mr. Vanselson*, that you were heard upon it, and we received the confession as evidence at common law, which we could not refuse going to the jury. We can not therefore hear you upon those points.

*Mr. Vanselson.*—I beg most respectfully to contend that it is the privilege of the counsel for the prisoner to shew, at this stage of the proceedings, if they can, that illegal evidence has been admitted, and without its being any reflection upon the Court, to contend that the jury have been misdirected. I submit that I may go into an argument upon these two principles, because they furnish legal grounds in support of the motions which we are to have the honour to submit to your honours.

*Chief Justice Sewell.*—You can not, for a mo-

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a motion for a new trial, and we believe that it will not be wrong for us to urge such arguments as present themselves to our minds, taking care at the same time, that they are regular, and conformable to law. Upon this principle, I submit to the Court, with the utmost respect, that I am not proposing to do more than my duty to the prisoner, because my positions are built upon what is his right; but I am apprehensive I have not clearly explained my positions to the Court. I propose to submit to the Court that there are two things which my learned brethren, the officers of the Crown, have not proved, namely, that *Keveny* is actually killed, nor that *Owen Keveny* is dead; I also take the liberty of representing that we consider the confession of *De Reinhard*, which was admitted by the Court, as evidence that was not admissible.

ment, doubt the readiness of the Court to hear you upon any and every point that, by possibility, can be of advantage to the unfortunate prisoner, but these you mention have been already argued, and decisions have been given upon them. Upon the legality of receiving the confession as evidence, you addressed the Court at length, and with great ability; yourself, and Mr. Stuart; and we felt ourselves compelled to solemnly decide that it must be admitted at common law, as evidence to go to the jury. On the other point, which depended upon the credibility of witnesses, the jury have decided that *Owen Keveny* is dead, having been murdered by *François Mainville*, the prisoner being a principal in the second degree. We cannot therefore, Mr. Vanfelson, hear you on that part of your propositions, as it is a fact decided by the verdict of the jury.

*Mr. Vanfelson.*—I should imagine that the receipt of illegal evidence on a trial, or the misdirection of the judge, would furnish strictly legal grounds to argue, on a motion for a new trial, or in arrest of judgement. I beg the Court to consider me as arguing on general grounds, but I humbly conceive I am not beyond my privilege in bringing before the Court these points. I believe it is no unusual occurrence, but the constant practice.

*Mr. Justice Bowen.*—Not, Mr. Vanfelson, to call upon the same Court, which has already decided a question, to reverse its decision, and say that it was in error. Points of law decided in the lower Courts are often brought up to the superior, and arguments take place on the correctness of these decisions; such as from the Assizes to the Court of King's Bench, but no case, I believe, was ever yet heard of wherein a Court was called upon to hear a solemn argument, the object of which must be to induce it to reverse its

own decision. That is completely beyond usual occurrences. In fact, a proposition such as I never heard of before.

*Chief Justice Sewell.*—It is the wish of the Court, in refusing to hear an argument on what is in fact already decided, (and decided after hearing argument,) in the most solemn manner, that you should distinctly appreciate our motives for so doing. The Indictment charges *Owen Keveny* to have been killed by *Mainville*, the prisoner being a principal in the second degree, by being present, aiding in the murder. The jury have, by their verdict, declared *Owen Keveny* was the person killed; then, as to the proof of the actual death, the verdict equally establishes that point. In the absence of positive evidence of the death, by the body having been seen, the Crown officers produced a chain of testimony, from which, as they contended, the death must be inferred. The jury have, by their verdict, declared that they did so infer, and have decided alike, that the man is dead, and that the man who was murdered by *Mainville*, was actually, as is charged by the indictment, *Owen Keveny*. They have decided the matter, and we can not meddle with their decision. Their verdict is upon record, they returned it according to the credit which they gave to the evidence, and not against manifest evidence, and we can not on that ground disturb it. Had they acquitted even against manifest evidence, we could only, before recording the verdict, direct the jury to go out again, and reconsider the matter, but not after the verdict had been recorded, then, though it was a verdict against evidence, we could not set it aside, on a prosecution properly criminal; and though a verdict which convicts may be set aside, under the humane provisions of our law, it is only for being given contrary to evi-

dence, or the misdirections of the judge. These rules are found in 2nd Hawkins, cap. 47. sect. 11 and 12.

*Mr. Justice Bowen.*—The point is so well established that, after a conviction, a motion in arrest of judgement must be on clear matter of law, that I confess I am surprised it should be attempted to pursue a different course.—My Lord Hale expressly lays it down, after conviction a motion in arrest of judgement must be on a clear point of law, and not of fact, and that if a jury had found even contrary to fact, still such finding could not stay judgement, though it furnished ground for a recommendation to mercy. But a verdict being recorded, unless on points of law, a Court can hear nothing, as if they did, they would cease to be judges. They would be a jury, deciding upon facts, instead of judges administering law.

*Mr. Vanfelson.*—S'il plait à la Cour, je n'ai pas le désir de demander que dans mon argument le procès seroit encore entendu, mais je soumetts, de la part du prisonnier, avec une croyance que c'est mon devoir, et également mon droit, deux motions, l'une pour un procès nouveau, et l'autre une motion en arrêt de jugement. En appui de ces motions, j'ai l'honneur de soumettre que la confession du prisonnier ne devoit pas avoir été reçue; encore, je soumetts, certainement avec beaucoup d'humilité, que les directions de votre honneur aux jurés sur les deux points, du nom de baptême et du mort actuel de Keveny, n'étoient pas conformes aux loix, et que, en suivant ces directions, les jurés ont trouvé, sans aucune preuve, la mort de Owen Keveny.<sup>(37)</sup>

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(37). May it please the Court, I have no desire that in my argument the trial should be heard over again, but I submit, on the

*Chief Justice Sewell.*—I must interrupt you, for we can not allow you to argue the points you mention. You surely would not, on a motion for a new trial, or in arrest of judgement call upon us to let you argue over again every point which occurred in the course of the trial, really you are by this course asking us to take up the cause again, and go through it from beginning to end, point by point, and say whether or not the jury have rightly decided on the matters of fact, and whether the Court have decided right on the question of law. We can not do it; if you have a motion for a new trial, or in arrest of judgement, let them be supported by legal arguments, and we are ready to hear you at any length your inclination, guided by a sense of duty, may lead you to address us.

*Solicitor General.*—I request permission again to remark, that it appears to me to be a question whether the Court have the power to grant a new trial, and if they have not, that it will be useless for my learned friends to occupy the time of the Court upon a subject which, perhaps, if strictly looked into, ought not to be entertained at all. I take it to be a settled point that in no offence higher than a misdemeanor, can a new trial be granted, and if that opinion is not erroneous, I should consider that my learned friends can not

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part of the prisoner, with the persuasion that it is my duty, and equally my right, two motions, one for a new trial, and the other a motion in arrest of judgement. In support of these motions, I have the honour to submit that the confession of the prisoner ought not to have been received; again, I submit, certainly with great deference, that your honour's direction to the jury upon the two points, namely, the christian name, and the actual death, of Keveny, were not conformable to law, and that, in following those directions, the jury found the death of Owen Keveny, without any proof.

be permitted to argue the former motion, but must confine themselves to that in arrest of judgement.

*Mr. Stuart.*—I by no means consider that it is a settled point that a new trial can not be granted in a case of felony. The course, I believe, which is to be observed in this argument is, that we shall be first heard in support of our motions and the learned Crown officers will reply to us. In so doing they will oppose such authorities to us as their judgements esteem to weigh against us, but I beg we may be permitted to state the grounds upon which we rely, without interruption. My learned friend, Mr. Vanfelson, will open to the Court our reasons in support of the motions, and I shall have the honour to follow him. If we exceed the fair limits of discussion or advance illegal positions we shall be stopped by the bench, and, as is our duty, bow to any correction which its wisdom may dictate.

*Mr. Vanfelson.*—Les moyens qui j'ai l'honneur de soumettre pour appuyer les deux motions que nous proposons de faire à la Cour, savoir, pour un procès nouveau, et en arrêt de jugement, sont plusieurs, et avec la permission de vos honneurs, je prie votre attention à ceux qui je produirai pour vous induire à accorder au prisonnier un procès nouveau. Premièrement donc, je dis que la confession du prisonnier devant Milord Selkirk ne devoit pas avoir été reçue. 2ment. Je soumetts, avec la plus grande déférence, que la Cour a mal dirigé aux jurés à l'égard des bornes de la province du Haut-Canada; et, 3ment, j'avance que les jurés ont trouvé contre, ou plutôt sans aucune, évidence, que le prisonnier aidait Mainville à tuer *Owen Keveny*, parceque les officiers de la Couronne n'ont pas mis en preuve que Keveny se trouve actuellement mort, ni que c'étoit *Owen Keveny* qui a été tué par Mainville. Voilà les moyens par

lesquels je me propose de supporter la motion pour un procès nouveau.<sup>(21)</sup>

*Mr. Justice Bowen.*—And they are grounds upon which, I confess, I think we ought not to hear you. On the face of them is stated what certainly is not a fact, for the verdict of the jury directly and flatly contradicts it. The verdict of the jury, declaring the prisoner to be “guilty of the felony” whereof he was accused, in manner and form “as he stood charged in the indictment,” explicitly says, that the man is dead, and equally declares that it was *Owen Keveny* whom the prisoner was present aiding and abetting the murder of. I confess that I can not reconcile myself to hear you argue points already decided by the jury, and without at this moment expressing an opinion upon Mr. Solicitor’s suggestion as to the propriety of at all entertaining a motion for a new trial in a case of felony, I remark that, if permitted, it must be argued on legal grounds, and not upon matters of fact, for they were never within the sphere of our dictum; they belonged to the jury, who have decided upon them according to their judgements and consciences; we have recorded their decision,

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(21) The grounds which I have the honour to submit, in support of the two motions which we propose to lay before the Court, namely, for a new trial, and in-arrest of judgement, are several, and, with the permission of your honours, I pray your attention to those I shall produce, to induce you to grant the prisoner a new trial. In the first place then, I say, that the prisoner’s confession before my Lord Selkirk ought not to have been received. Secondly, I submit, with the greatest deference, that the Court misdirected the jury with respect to the boundaries of the province of Upper Canada; and thirdly, I maintain that the jury have found that the prisoner assisted Mainville to kill *Owen Keveny*, contrary to, or rather without any, evidence, inasmuch as the officers of the Crown have not put in proof that Keveny is actually dead, nor that it was *Owen Keveny*, who was killed by Mainville. These are the means by which I propose to support the motion for a new trial.

and we have no right to meddle with it. As to the confession, you have been heard upon it; and the Court solemnly pronounced as its decision that, as evidence at common-law, it was admissible, and could not be withheld from the jury, it, therefore, went to them, and in the exercise of their discretion, they have, unfortunately for the prisoner, believed it. Under these circumstances, I think, it is going too far to endeavour to support a motion for a new trial, by calling upon us to say that in so deciding we acted contrary to law. As to entertaining a motion for a new trial, I repeat, at present I give no opinion.

*Attorney-General.*—I beg permission of the Court to contend, before my learned friend resumes his observations, (as it may save time,) that in receiving a motion for a new trial in this case, we are acting in contradiction to first principles. This is a case of felony, and your honours know that it is settled, beyond dispute, that no new trial can be granted in cases of felony. I find no authority which goes the length of saying that a new trial can be granted, in a case of felony, under any circumstances. The attainment of substantial justice, your honours know, is not a principle by which a Court can be altogether governed in granting or refusing new trials. Law and usage combine to limit this discretionary power, even in ordinary cases, where the legality of them is not disputed. In support of this doctrine, I refer to 6 Term Reports, p. 628, the case of the King versus Mawbey, Bart. and others. In the argument upon that case, the principle I have just submitted is contended for on the part of the Crown, and although Lord Kenyon, in giving the judgment, did not altogether recognize the general position, yet he said, "In one class of offences, indeed, those greater than misdemeanors, no new trial



" can be granted at all." In this case of Mawbey  
 and others, it was argued by Garrow and Lawes,  
 " that in granting or refusing new trials, the Court  
 " can not altogether be governed by the principle  
 " of obtaining substantial justice, but their discre-  
 " tion, in this respect, is limited by law and usage,  
 " and if it were exercised to the length now con-  
 " tended for on the part of the defendants, it  
 " would go to the destruction of the trial by jury.  
 " The higher the antiquity of the practice of grant-  
 " ing new trials is, the stronger argument it fur-  
 " nishes against the present application, that no  
 " instance of the kind can be found except Fearn's  
 " case, which has been questioned and overruled.  
 " That the attainment of real justice is not the sole  
 " principle which regulates the granting of new  
 " trials is apparent on many accounts. If a defend-  
 " ant were unquestionably guilty, and the jury  
 " acquitted him, though there is a palpable failure  
 " of justice, yet the Court can not grant a new  
 " trial. On the other hand, if a defendant be  
 " convicted of felony or treason, though against  
 " the weight of evidence, there is no instance of a  
 " motion for a new trial in such a case, but the  
 " judge passes sentence, and respites execution,  
 " till application can be made to the Crown," and  
 the conclusion is this, " it appears, therefore, that  
 " the discretion of the Court in granting new trials  
 " must be regulated by former practice, and so  
 " exercised as not to raise any incongruity on the  
 " record." In delivering judgement upon the  
 case, Lord Kenyon, Chief Justice, says, page 638,  
 " It has been contended that inasmuch as defend-  
 " ants, who have been acquitted in criminal cases,  
 " can not be tried a second time, the necessary  
 " consequence was that in this case we could not  
 " grant a new trial, even though we were clearly  
 " of opinion that the other two defendants had

"been improperly convicted. But I think the  
 "rule was correctly stated by the counsel for the  
 "defendants, that in granting new trials the Court  
 "knows no limitation, (except in some excepted  
 "cases,) but they will either grant or refuse a  
 "new trial, as it will tend to the advancement of  
 "justice. In one class of offences indeed," his  
 lordship adds, "those greater than misdemeanors,  
 "no new trial can be granted at all." After citing  
 such an authority as my Lord Kenyon, I consider  
 it unnecessary to trouble your honours further, as  
 no argument of mine can, by possibility, add to  
 the decision of so learned a judge. I proceed to  
 remark relative to another of my learned friend's  
 proposed points, which I consider it would be  
 equally inexpedient for the Court to entertain, viz.  
 his objections to the want of proof of the baptis-  
 mal name and of the death of Keveny. They are  
 circumstances involving in them matters of fact,  
 upon which the jury have given us a decision, by  
 which we are bound to abide. If their decision is  
 wrong, there is another quarter in which a repre-  
 sentation can be made, and if proper that it should  
 be so, will no doubt be made with success. A  
 word as to the confession before Earl Selkirk,  
 which my learned friend states to have been irre-  
 regularly received. It was not put in as a confession  
 made before Earl Selkirk, it was undoubtedly of-  
 fered as such, but was refused admission, except  
 as a piece of evidence at common law. The Court  
 decided, after hearing the learned gentlemen a-  
 gainst it, that it must be so received, it is, there-  
 fore, useless to argue upon that point, as I take  
 it your honours will not be disposed to listen to  
 an argument against your own decision, whilst, as  
 to the jury convicting against, or without, evi-  
 dence, it is equally unnecessary I should trouble  
 the Court, as I consider the motion that position

was intended to support, viz. one for a new trial, must be refused to be heard. I beg to refer to another authority upon this point, 13, East, page 416, the King versus the Inhabitants of Oxford, in a note, (b) "In capital cases at the assizes, if a conviction take place upon insufficient evidence, the common course is to apply to the Crown for a pardon, upon a full report of the evidence sent in by the learned judge to the secretary of state for the home department, but I am not aware of any instance of a new trial being granted in a capital case, and upon the debate of all the judges in Margaret Tinkler's case, in 1781, it seemed to be considered that it could not be." Under these authorities, which, for the sake of preserving regularity, I have produced as conclusive against receiving a motion for a new trial, I presume the gentlemen will be compelled by the Court to restrain themselves to the motion in arrest of judgement.

*Mr. Stuart.*—With permission of the Court, I will state very summarily the ground proposed to be occupied by the prisoner's counsel on these motions, for I beg to say that I consider it by no means a settled point that a motion for a new trial can not be entertained and granted in a criminal case, such as the present. It is true that, as the learned Attorney-General has shewn, there is a dictum upon the subject —

*Chief Justice Sewell.*—Allow me to interrupt you, Mr. Stuart, to say that we will hear you fully on every point which consistently with our duty we can do. You know we should be glad to hear you on every point, which your judgements consider it to be your duty to urge on behalf of this unfortunate prisoner, but the solid, legal points in arrest of judgement, must not be confounded with reasons to suspend the execution

of the judgement, as they must be addressed to another quarter. It is not necessary to determine at the present moment, how far a new trial can be granted in cases of felony. We will hear you fully on the grounds of your legal, indisputably legal, motion, that in arrest of judgement, and incidentally, or by the way side as it were, you may touch upon other matters. If you exceed legal bounds, you must of course, be stopped. I think this course will save much time, and enable you, gentlemen, who are to support the motion, to fully attain the objects you have in view, without trenching on what appears already to have been fully considered, and, in fact, determined.

*Mr. Vanfelson.*—Dont, s'il plait à la Cour, sur ma motion en arrêt de jugement, je soumets deux propositions. Que cette Cour n'a pas aucune juridiction, ou pouvoir de prendre connoissance des offenses commises dans le territoire Sauvage sous le statut du 43me. du roi; et 2<sup>ment</sup>. Que, si la Cour pouvoit prendre connoissance d'aucune offense, elle n'a pas pouvoir de faire le procès pour aucune félonie. Premièrement donc, je dis que cette Cour ne possède point le pouvoir de prendre connoissance des offenses commises dans le territoire Sauvage. Cette proposition est une proposition générale. Je dis, généralement, qu'une Cour d'Oyer et Terminer ne possède pas originairement aucune juridiction pour prendre connoissance des offenses commises dans le territoire Sauvage, et que le statut du 43me. du roi ne la donne pas à aucune Cour de la province du Bas Canada, mais aux Cours. Dans la province du Bas Canada, le pouvoir de juger des crimes et offenses commis dans le territoire Sauvage, est donné aux Cours usuelles, aux Cours ordinaires.—Il est bien connu que le statut du 34me. du roi communément appelé "l'acte juridique," sépare la province du Bas-Canada en

trois parts, nommées districts, et dans chaque district il fut établie une Cour. Ces districts sont, le district de Québec, le district de Montréal, et le district de Trois Rivières, et je sou mets à vos honneurs que c'est dans les Cours de ces districts que nous trouverons les *Cours* de cette province du Bas Canada. A présent regardons pour un moment à l'acte de l'année 1803, et nous verrons qu'il s'y trouvera deux ou trois choses très remarquables. Lisons premièrement le titre et le préambule de cet acte et comparons les avec le statut du 34<sup>me</sup>. du roi, cap. 6.<sup>(33)</sup> The act is entitled, "an act  
 "for extending the jurisdiction of the Courts of  
 "justice of the provinces of Lower and Upper  
 "Canada to the trial and punishment of persons

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(<sup>33</sup>) Then, may it please the Court, upon my motion in arrest of judgement, I submit two positions. That this Court has not any jurisdiction or power to take cognizance of offences committed in the Indian territories, under the statute of the 43d of the king, and secondly, that if the Court can take cognizance of any offence, it has not the power to try any felony. In the first place, therefore, I say that this Court does not possess the right to take cognizance of any offences committed in the Indian territories. This position is a general one. I say generally that a Court of Oyer and Terminer does not originally possess any jurisdiction to take cognizance of offences committed in the Indian territories, and that the statute of the 43d of the king does not give it to any Court of the province of Lower Canada, but to the *Courts*. The right of trying, in the province of Lower Canada, crimes and offences, committed in the Indian territories is given to the *usual Courts*, to the ordinary Courts. It is well known that the statute of the 34th of the king commonly called the "judicature act," divides the province of Lower Canada into three parts, called districts, and a Court was erected in each district. These districts are, the district of Québec, the district of Montréal, and the district of Three Rivers; and I submit to your honours that in these district-Courts, we must recognize the Courts of this province of Lower Canada. Let us now look, for a moment, at the act of the year 1803, and we shall see that it contains two or three very remarkable things. Let us first read the title and the preamble of this act, and let us compare them with the statute of the 34th of the king; cap. 6.

" guilty of crimes and offences within certain parts  
 " of North America, adjoining to the said provin-  
 " ces." This act was passed in the year 1803, or  
 the 43d year of his Majesty's reign. The pream-  
 ble fully explains the occasion of passing the act  
 and its objects: " Whereas crimes and offences  
 " have been committed in the Indian territories,  
 " and other parts of America, not within the limits  
 " of the provinces of Upper or Lower Canada, or  
 " either of them, or of the jurisdiction of any of the  
 " Courts established in those provinces, or within  
 " the limits of any civil government of the United  
 " States of America, and are therefore not cogni-  
 " zable by any jurisdiction whatsoever, and by  
 " reason whereof great crimes and offences have  
 " gone, and may hereafter go, unpunished, and  
 " greatly increase." Ici nous voyons le mal auquel  
 cet acte pourvoit le remède nécessaire. C'est ce-  
 ci, que dans le territoire Sauvage des grandes of-  
 fenses ont été commises, et par raison qu'il n'y a-  
 voit point de jurisdiction possédant le pouvoir de  
 faire le procès à ceux qui avoient commis ces of-  
 fenses, ils se sont échappés de punition, et qu'on  
 continueroit d'échapper sans punition si ce n'eut  
 été que le parlement eut passé cet acte.<sup>(\*)</sup> The  
 preamble thus sets forth the nature of the remedy  
 intended to be applied by the act: " For remedy  
 " whereof, may it please your Majesty, that it may  
 " be enacted, and be it enacted by the King's most  
 " excellent Majesty, by and with the consent of  
 " the Lords spiritual and temporal, and Commons,

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(\*) Here we perceive the evil for which this act provides  
 the remedy required. It is this, that great offences had been  
 committed in the Indian territories, and on account of there be-  
 ing no jurisdiction possessing the power of trying those who had  
 committed those offences, they had escaped punishment, and  
 would have continued to escape with impunity, if the parliament  
 had not passed this act.

“ in this present parliament assembled, and by the  
 “ authority of the same, that from and after the  
 “ passing of this act, all offences committed within  
 “ any of the Indian territories or parts of America  
 “ not within the limits of either of the said provin-  
 “ ces of Upper or Lower Canada, or of any civil  
 “ government of the United States of America,  
 “ shall be, and be deemed to be, offences of the  
 “ same nature, and shall be tried in the same man-  
 “ ner, and subject to the same punishment, as if  
 “ the same had been committed within the pro-  
 “ vince of Lower or Upper Canada.” Voilà le  
 titre et le préambule de l’acte; et son objet se  
 laisse bien appercevoir par l’explication qu’on en  
 donne. C’est pour donner aux Cours des provin-  
 ces du Bas et du Haut Canada, l’autorité de juger  
 les crimes et offenses commis dans les pays Sau-  
 vages de la même manière que s’ils avoient été  
 commis dans l’une ou l’autre de ces provinces; car  
 par cet acte il est déclaré qu’ils seront, et seront  
 estimés être, des offenses de la même nature, et  
 seront sujets à la même punition. Mais aupara-  
 vant de regarder à l’acte juridique, informons nous  
 qu’est ce qu’on dit touchant les Cours des deux  
 provinces, et nous le trouverons dans la troisième  
 section de l’acte, laquelle je prendrai la liberté  
 de lire.<sup>(41)</sup> “ And be it further enacted, that

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(41) That is the title and the preamble of the act, and its ob-  
 ject is perceivable by the explanation which is given of it. It  
 is to give to the Courts of the provinces of Lower and of Up-  
 per Canada, authority to try the crimes and offences committed  
 in the Indian territories in the same manner as if they had been  
 committed in one or the other of those provinces, for, by this  
 act, it is declared that they “ shall be, and be deemed to be,  
 “ offences of the same nature, and subject to the same punish-  
 “ ment.” But before we look at the judicature act, let us exa-  
 mine what is said concerning the Courts of the two provinces,  
 and we shall find it in the third section of the act of the 43d of  
 the king, which I will take the liberty of reading.

"every such offender" (that is offenders conveyed according to the provisions of the foregoing clause of the act to this lower province to be dealt with according to law) "may and shall be prosecuted and tried in the Courts of the province of Lower Canada." Je prie l'attention de la Cour à ces mots, "may and shall be prosecuted and tried in the *Courts* of the province of Lower Canada." C'est dans les *Cours* non pas dans la *Cour*. C'est les *Cours* (au pluriel) de la province. Quelles *Cours*? assurément les *Cours* des trois districts de la province, les *Cours* de Québec, et de Montréal, avec la *Cour* du Banc du Roi ordonnée à être tenue à Trois Rivières, lesquelles ont été établies par l'acte du 34<sup>me</sup>. du roi auquel nous regarderons tout à l'heure. Ensuite cette section dit,<sup>(42)</sup> "or if the Governor or Lieutenant Governor, or person administering the government for the time being, shall, from any of the circumstances of the crime or offence, or the local situation of any of the witnesses for the prosecution or defence, think that justice may be more conveniently administered in relation to such crime or offence, in the province of Upper Canada, and shall, by any instrument under the great seal of the province of Lower Canada, declare the same, then that every such offender may and shall be prosecuted and tried in the *Court* of the province of Upper Canada, in which crimes or offences of the like nature are usually

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(42) I pray the attention of the Court to these words, "may and shall, &c." It is said in the *Courts*, not the *Court*. It is the *Courts*, (in the plural,) of the province. What *Courts*? Assuredly the *Courts* of the three districts of the province, the *Courts* of Québec, and of Montreal, with the *Court* of King's Bench directed to be held at Three Rivers, which were established by the act of the 34<sup>th</sup> of the king, to which we shall presently have reference. Afterwards this section says —



" tried, and where they would have been tried, if  
 " such crime or offence had been committed with-  
 " in the limits of the province where the same  
 " shall be tried under this act." La Cour sans  
 doute appercevra que cette section, en parlant du  
 Haut Canada, dit *la Cour*, mais parlant de cette  
 province, *les Cours*. Et pourquoi y faisoit on cette  
 différence? La raison en est claire. La province  
 du Haut Canada n'a qu'une seule Cour, pendant que  
 la province du Bas Canada en a trois; et ces trois  
*Cours*, la Cour du district de Québec, du district  
 des Trois Rivières, et du district de Montréal,  
 conjointement, font les *Cours usuelles* de la province  
 du Bas Canada. Regardons maintenant à l'acte  
 du 34me du Roi, cap. 6, intitulé, " acte que di-  
 " vise la province du Bas Canada, qui amende la  
 " judicature d'icelle, et qui rappelle certaines loix  
 " y mentionnées." Après un préambule qui re-  
 présente à sa Majesté, que " le conseil législatif,  
 " et les représentans de votre peuple ayant pris  
 " en notre très sérieuse considération le message  
 " à nous communiqué dans la dernière session, par  
 " son Excellence le Lieutenant Gouverneur, &c.  
 " recommandant un plan qui change et amende la  
 " judicature d'icelle et pour établir une adminis-  
 " tration convenable et uniforme de la justice en  
 " icelle, et ayant murement délibéré sur les moyens  
 " recommandés dans le dit message, pour assurer  
 " à votre peuple dans cette province les importants  
 " objets du soin paternel de votre Majesté, avec  
 " une profonde reconnaissance de celui, nous sup-  
 " plions très humblement votre Majesté qu'il  
 " puisse être statué, &c." (dans la forme usuelle)  
 " que la dite province du Bas Canada consistera  
 " de trois districts qui seront dénommés, district  
 " de Québec, district de Montréal, et district des  
 " Trois Rivières, et divisés par les lignes sui-  
 " vantes." Ces lignes qui bornent les districts ne

sont pas nécessaires à lire. La seconde clause pourvoit pour l'établissement des Cours du Banc du Roi pour les districts de Québec, et de Montréal, dans ces mots, " Et qu'il soit de plus statué par l'autorité susdite, qu'il sera constitué et érigé dans chacun des dits districts de Québec et Montréal respectivement, une Cour qui sera nommée Cour du Banc du Roi ; que la Cour du Banc du Roi pour le district de Québec consistera du juge en chef de sa Majesté pour la dite province, et de trois juges puisnés, et la Cour du Banc du Roi pour le district de Montréal consistera du juge en chef de sa Majesté pour la dite Cour, et de trois juges puisnés, et que les dites Cours, dans les districts respectifs susdits, auront une juridiction originelle, prendront connoissance, ouiront, procederont, et détermineront dans la manière ci-après statuée, toutes causes tant civiles que criminelles et dans lesquelles le roi est partie, exceptées celles purement de juridiction d'amirauté, et celles que sont ci-après exceptées et pourvues pour le district inférieur de Gaspé, comme partie du dit district de Québec." La section prochaine établit des termes pour les procédures criminelles à Québec et à Montréal ; " Et pour l'administration de la justice en affaires criminelles, il est de plus statué par la dite autorité, qu'il sera tenues par deux ou plus des juges de la dite Cour du Banc du Roi, un desquels sera toujours le juge en chef de sa Majesté pour la province, ou le juge en chef du Banc du Roi à Montréal, dans chacun de susdits districts de Québec et de Montréal, deux sessions de la dite Cour du Banc du Roi par chaque année pour prendre connoissance de tous crimes et offenses criminels aux tems et lieux ci-après mentionnés," qui sont bien connus. Ici nous voyons quelles sont les "*Cours usuelles*" de la

province du Bas Canada. “ *Les Cours du Banc du Roi*” pour les districts. Mais il faudroit que j’aurois fait mention auparavant de l’établissement, par la section onze, des deux termes de la Cour du Banc du Roi pour les causes criminelles et civiles aux Trois Rivières, et les pouvoirs attribués aux juges d’icelle, qui sont les mêmes entièrement que ceux des autres districts. “ Et comme il convient, pour donner plus d’aisance et de facilité aux sujets de sa Majesté résidans dans le district des Trois Rivières, què toutes causes relatives à icelui puissent y être déterminées, qu’il soit en conséquence de plus statué par la susdite autorité, qu’il sera tenue dans la ville des Trois Rivières, par deux des juges des Cours du Banc du Roi des districts de Québec et Montréal, et par le juge provincial qui sera appointé pour le district des Trois Rivières, une Cour du Banc du Roi qui siégera en deux termes par chaque année, savoir, depuis le treizième jusqu’au dernier jour de chacun des mois de Mars et Septembre, les dits deux jours exclusivement, les fêtes et dimanches exceptés, et durant les quatre premiers jours juridiques de chacun des dits termes, les dits deux juges et le juge provincial, ou deux d’entr’eux, avec le juge en chef de la Cour du Banc du Roi à Montréal prendront connoissance de toutes causes et offenses criminelles, &c.” Ici suivent des provisions bien connues concernant l’espèce des actions sur lesquelles le pouvoir de prendre connoissance est donné; et les jours de retour sont fixés; et la section finit alors ainsi, “ et la dite Cour du Banc du Roi qui sera tenue comme ci-dessus aux Trois Rivières, et les juges et le juge provincial composant la dite Cour, ou aucun d’eux, auront dans ce district, en Cour et hors d’icelle, les mêmes pouvoirs et autorités dans tous les cas tels qu’accordés par cet acte

" aux Cours du Banc du Roi des districts de Qué-  
 " bec et de Montréal, et aux juges d'icelles, ou à  
 " aucun d'entr'eux, en Cour et hors d'icelle, ou  
 " hors de terme." C'est donc ici, (s'il plait à la  
 Cour) je sou mets, qu'il faut que nous cherchons  
 après les Cours criminelles usuelles de cette pro-  
 vince, et dans une desquelles le prisonnier auroit  
 été jugé si son offense avoit été commise dedans  
 la province. Je sais très bien que sa Majesté peut  
 faire établir des Cours d'Oyer et Terminer, et que  
 la quatrième section de cet acte pourvoit pour des  
 commissions d'Oyer et Terminer, en ces mots,  
 sect. 4. " Pourvu toujours, et il est par le pré-  
 " sent statué, que rien contenu dans le présent  
 " acte ne s'étendra, on ne sera entendu s'étendre,  
 " à empêcher le gouverneur, lieutenant gouver-  
 " neur, ou la personne qui aura l'administration  
 " du gouvernement de cette province pour le tems  
 " d'alors, d'émaner en aucun tems, autre que pen-  
 " dant les séances des dits termes, des commissions  
 " d'Oyer et Terminer, et délivrance générale  
 " des prisons pour tel district ou comté dans cette  
 " province ainsi qu'il sera jugé expedient et neces-  
 " saire." Nous disons rien contre cette provision,  
 nous savons que c'est spécialement le prorogatif de  
 sa Majesté et de son représentant, d'émaner des  
 commissions d'Oyer et Terminer, mais je prends la  
 liberté de remarquer, généralement, qu'une Cour  
 d'Oyer et Terminer et délivrance générale ne s'ac-  
 corde pas, ni dans sa formation, ni dans ses pouvoirs,  
 avec les Cours du Banc du Roi, et particulière-  
 ment, je soutiens qu'une Cour d'Oyer et Terminer  
 et délivrance générale des prisons ne peut pas être  
 la Cour désignée par l'acte de 1803. Regardons  
 à la troisième section de cet acte, et nous verrons  
 dans ses provisions l'impossibilité qu'une Cour  
 d'Oyer et Terminer aye reçu le pouvoir de ju-  
 ger des offenses commises dans le territoire Sau-

vage, ce qui est seulement donné aux *Cours* où communément les offenses de la même description commises dedans la province sont jugées. Ce n'est pas seulement qu'en parlant du Bas Canada "*les Cours*" sont toujours mentionnées, et qu'en parlant du Haut Canada "*la Cour*" est toujours le mot usité, (quoique je considère cette circonstance comme indiquant avec beaucoup de force les vues du parlement) mais regardons à une autre part de cette clause, et nous verrons que le dessein du parlement est exprimé si clairement que ce n'est pas possible de se tromper au sujet des *Cours* du Bas Canada, (<sup>42</sup>) after declaring that "every of-

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(<sup>42</sup>) The Court will, no doubt, perceive that this section, speaking of Upper Canada, says the *Court*, but, speaking of this province, the *Courts*. And why was this distinction made? The reason is obvious. The province of Upper Canada, has but one single Court, whilst the province of Lower Canada has three; and those three, the Court of the district of Quebec, the Court of the district of Three Rivers, and the Court of the district of Montreal, together constitute the *usual Courts* of the province of Lower Canada. Let us now look at the act of the 34th of the king, which is entitled, "an act for the division of "the province of Lower Canada, for amending the judicature "thereof, and for repealing certain laws therein mentioned." After a preamble which represents to his Majesty that "the legislative council and representatives of your people of the province of Lower Canada, having taken into our most serious "consideration the message communicated to us last session, "by his Excellency the Lieutenant Governor, &c. recommending a plan, for altering and amending the judicature thereof, "and for establishing a due and uniform administration of justice "therein, and having materially deliberated upon the means "recommended in the said message, for securing to your said "people in this province, the important objects of your Majesty's paternal care, we do, with profound gratitude for the "same, most humbly beseech your Majesty, that it may be "enacted, &c." (in the usual form) "that the said province "of Lower Canada shall consist of three districts, to be called "the district of Quebec, the district of Montreal, and the district of Three Rivers, which shall be divided by the following "lines." It is unnecessary to read the lines that bound the different districts. The second clause provides for the establish-

“ fender tried and convicted under this act shall be  
 “ liable and subject to such punishment as may by  
 “ any law in force, in the province where he or  
 “ she shall be tried, be inflicted for such crime or  
 “ offence,” “ and such crime or offence may and

ment of Courts of King's Bench for the districts of Quebec and Montreal, in these words, “ And be it further enacted by the  
 “ authority aforesaid, that there shall be constituted and erected  
 “ in each of the said districts of Quebec and Montreal respect-  
 “ ively, a Court to be called the Court of King's Bench; that  
 “ the Court of King's Bench for the district of Quebec shall con-  
 “ sist of his Majesty's chief justice of the said Court and three  
 “ puisne justices; and the Court of King's Bench for the di-  
 “ strict of Montreal shall consist of his Majesty's chief justice of  
 “ the said Court and three puisne justices; and that the said  
 “ Courts in the respective districts aforesaid shall have original  
 “ jurisdiction, or take cognizance of, hear, try, and determine,  
 “ in the manner hereinafter enacted, all causes, as well civil as  
 “ criminal, and where the king is a party, except those purely  
 “ of admiralty jurisdiction, and such as are herein after except-  
 “ ed and provided for the inferior district of Gaspé, as part of  
 “ the said district of Quebec.” The next section establishes  
 the terms for the criminal sessions at Quebec and Montreal.  
 “ And for the administration of justice in criminal cases, it is  
 “ further enacted, by the authority aforesaid, that there shall  
 “ be held by two or more justices of the said Court of King's  
 “ Bench, one of whom shall always be his Majesty's chief jus-  
 “ tice of the province, or the chief justice of the Court of King's  
 “ Bench at Montreal, within each of the aforesaid districts of  
 “ Quebec and Montreal, two sessions of the said Court of King's  
 “ Bench, in every year, for the cognizance of all crimes and  
 “ criminal offences at the times and places hereafter mentioned,”  
 which are well known. Here we perceive what are the *usual*  
*Courts* of the province of Lower Canada. The Courts of King's  
 Bench for the districts. But I ought before this to have men-  
 tioned the establishment, by the eleventh section, of two terms  
 of the Court of King's Bench for criminal and civil causes at  
 Three Rivers, and the powers attributed to the judges there,  
 which are exactly the same with those of the other districts.—  
 “ And whereas it will contribute to the ease and convenience of  
 “ his Majesty's subjects residing in the district of Three Rivers,  
 “ that all causes relating thereto be there decided; be it there-  
 “ fore enacted, by the authority aforesaid, that there shall be  
 “ held at the town of Three Rivers, for the district of Three  
 “ Rivers, by two of the justices of the Court of King's Bench

“ shall be laid and charged to have been committed within the jurisdiction of said Court, and such Court may and shall proceed therein to trial, judgment, and execution, or other punishment, for such crime or offence, in the same

“ for the districts of Quebec and Montreal, and the provincial judge to be appointed for the district of Three Rivers, a Court of King's Bench, to sit in two terms every year, that is to say, from the thirteenth to the last day of each of the months of March and September, both days inclusive, (Sundays and holydays excepted) and during the four first juridical days of each of the said terms, the said two justices and provincial judge, or any two of them, with the chief justice of the province, or the chief justice of the Court of King's Bench at Montreal, shall have cognizance of all crimes and criminal offences, &c.” Here follow the provisions which are well known, with regard to the species of actions over which the right of taking cognizance extends, and with regard to the return days, and the section finishes thus: “ and the said Court of King's Bench, to be held as aforesaid, at Three Rivers, and the justices and provincial judge composing the same, or any of them, shall have, within that district, both in and out of Court, the same powers and authorities in all cases, as are granted by this act to the Courts of King's Bench of the districts of Quebec and Montreal, and the justices thereof or any of them, in or out of Court, or out of term.” It is here therefore, may it please the Court, I submit, that we must seek for the usual criminal Courts of this province, and in one of which the prisoner would have been tried, if his offence had been committed within the province. I know very well that his Majesty has the power of appointing Courts of Oyer and Terminer, and that the fourth section of this act provides for commissions of Oyer and Terminer in these words. “ Provided always, and it is hereby enacted that nothing in this act contained shall extend, or be construed to extend, to prevent the Governor, Lieutenant Governor, or person administering the government of this province, for the time being, from issuing at any time or times, other than during the sittings of the said terms, commissions of Oyer and Terminer and general gaol delivery, for such district and county within this province, as shall be deemed expedient and necessary.” We say nothing against this provision, we know that it is specially the prerogative of his Majesty, and of his representative, to originate commissions of Oyer and Terminer, but I take the liberty of remarking, generally, that a Court of Oyer and Terminer and general gaol de-

“manner, in every respect, as if such crime or offence had really been committed within the jurisdiction of such Court,” the act goes on to make full provision for the issuing subpoenas and other processes to compel the attendance of witnesses, and it appears to me that the moment we read the terms in which this power is conveyed, and the persons to whom it is delegated, it will be impossible longer to doubt that only to the Courts of the three districts, as they were created by the act, commonly called the judicature act, was power given or jurisdiction extended, by the 43d. Geo. III, cap. 138. I will read the clause from that part to the end, “and it shall also be lawful for the judges,” observe the expression *the judges*, “and other officers of the said Courts to issue subpoenas, and other processes for enforcing the attendance of witnesses on any such trial, and such subpoenas and other processes shall be as valid and effectual, and be in full force, and put in execution in any parts of the Indian territories, or other parts of America, out of, and not within the limits of any civil government of the Unit-

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lively, is not co-equal, either in its formation, or in its powers, with the Courts of King's Bench; and in particular, I maintain that a Court of Oyer and Terminer and general gaol delivery, can not be a Court designated by the act of 1803. Let us look at the third section of that act, and we shall perceive, from its provisions, the impossibility of a Court of Oyer and Terminer possessing authority to try offences committed in the Indian territory, which is alone given to the Courts in which offences of the same nature committed within the province, are usually tried. It is not only that, in speaking of Lower Canada, it is always said, the *Courts*, and that, in speaking of Upper Canada, the *Court*, is the term made use of, (although I regard that circumstance as very strongly indicating the views of parliament) but if we look farther to another part of this section, we shall see that the intention of parliament is so clearly expressed, that it is not possible to mistake what is meant by the *Courts* of Lower Canada.

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"ed States of America, as well as within the limits  
 "of either of the said provinces of Upper or Lower  
 "Canada, in relation to the trial of any crimes or  
 "offences by this act made cognizable in such  
 "Court, or to the more speedy and effectually  
 "bringing any offenders to justice under this act  
 "as fully and amply as any subpoenas or processes  
 "are, within the limits of the jurisdiction of such  
 "Courts, from which any such subpoenas shall have  
 "issued as aforesaid; any act or acts, law or laws,  
 "custom, usage, matter, or thing, to the con-  
 "trary, notwithstanding." En remarquant sur  
 cette portion de l'acte de 1803, je soumets, avec  
 beaucoup de confiance, qu'une Cour d'Oyer et  
 Terminer, manquant les officiers dont la troisième  
 clause parle, ne peut pas être la Cour contemplée  
 par les mots "*the Courts of the province of Lower*  
 "Canada in which crimes and offences of the like  
 "nature are *usually* tried," parceque nous apper-  
 cevons que le pouvoir est donné aux Cours où les  
 juges président. C'est aux juges, par l'acte de  
 1803, de sortir légalement des subpoenas, &c. Dans  
 cette Cour ci, je dis, (et je le dis avec le plus grand  
 respect pour vos honneurs) que nous manquons de  
 juges. Vos honneurs siegent dans ce moment  
 comme commissaires du Roi, et non pas comme  
 juges. Donc, à cause de cette circonstance, cette  
 Cour ci ne peut pas être la Cour usuelle, parce-  
 que dans la Cour usuelle les juges président, et  
 telle Cour là ne se trouve que dans les Cours du  
 Banc du Roi.<sup>(44)</sup>

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(44) Proceeding to remark upon this part of the act of 1803, I submit, with much confidence, that a Court of Oyer and Terminer, not having the officers of which the third section speaks, can not be a Court such as was intended to be pointed out by the expression, "*the Courts, &c.*" for we find that the power is given to the Courts in which the *judges* preside. It is the *judges* who, by the act of 1803, are legally empowered to issue

*Chief Justice Sewell.*—We hope, though you question our power, you are not disposed to deny that, in point of fact, we are *judges*.

*Mr. Vanfelson.*—Assurément non, vos honneurs. (*a laugh*.) Nous disons encore qu'une autre différence entre la Cour du Banc du Roi et une Cour d'Oyer et Terminer, se trouve dans l'étendue de l'autorité de l'une et de l'autre. Il est nécessaire à cette Cour ci de s'assembler actuellement avant qu'elle puisse agir. Avant de s'assembler, on ne peut pas même émaner un subpoena, et pourquoi? parcequ'une Cour d'Oyer et Terminer manque de juges. Les officiers d'une telle Cour sont des commissaires du Roi, et leur autorité est de peu de durée, et en même tems d'une nature différente depuis le commencement jusqu'à la fin à de celle des juges. On ne peut pas émaner un subpoena, et même si on en sortit avant de s'assembler, les commissaires n'ont pas le pouvoir de forcer un témoin d'y faire attention. On ne peut pas contraindre un témoin de mauvaise volonté. La situation de vos honneurs ne ressemble pas à celle des juges du Banc du Roi. Votre autorité est comme la Cour elle-même, de peu de durée, pendant que celle des juges de la Cour du Banc du Roi est une autorité permanente, et une autorité aussi puissante que permanente. C'est pour cela, parceque le pouvoir d'une Cour d'Oyer et Terminer n'est pas continuél, ni assez ou suffisamment puissant pour enforcer ses procès de la manière de la Cour du Banc du Roi, et parceque les commissaires ne sont pas

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subpoenas, &c. Now, in the present Court, I say (and I say it with the greatest respect for your honours) that we have no judges. Your honours sit, at this moment, as his Majesty's commissioners, but not as judges. Therefore, considering this circumstance, this Court can not be the usual Court, because in a usual Court it is the judges who preside, and such a Court can only be found in the Courts of King's Bench.

des juges.<sup>(45)</sup> I mean need not be, or that, though judges, as commissioners they have not the power of judges,) que nous soumettons qu'une Cour d'Oyer et Terminer n'est pas une Cour ayant pouvoir de prendre connoissance des offenses commises dans les territoires Sauvages, parcequ'elle manque presque tous les caractères des Cours usuelles. Je voudrois encore remarquer qu'en faisant la clause pour l'émanation de commissions d'Oyer et Terminer, le parlement a marqué distinctement la différence entre les deux Cours. La Cour du Banc du Roi de chaque district est une Cour non seulement permanente et puissante, mais une Cour entière ou complete dans elle-même, ayant pouvoir d'exécuter ses jugemens. Une Cour d'Oyer et Terminer est obligée, par la cinquième section de l'acte juridique, de suspendre "l'exécution de" "chaque sentence ou jugement de telle Cour, qui" "s'étendra à la vie ou mutilation, ou à aucune

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(45) Mr. F. F.—Certainly not, your honours, (*a laugh.*) We say again that another difference between the Court of King's Bench, and a Court of Oyer and Terminer exists, in the extent of the authority of the one and of the other. It is necessary for this Court actually to meet, before it can act. Before meeting it can not even issue a subpœna, and why? Because a Court of Oyer and Terminer has no judges belonging to it. The officers of such a Court, are the king's commissioners, and their power is of short duration, and at the same time of a different nature from that of the judges, from the beginning to the end. A subpœna can not be issued, and even were it issued before the Court met, there exists no power in the commissioners to compel a witness to pay regard to it. An unwilling witness can not be forced to attend. The situation of your honours is not like that of the judges of the Court of King's Bench. Your authority is like the Court itself, one of short duration, whilst that of the judges of the Court of King's Bench is a permanent authority, and an authority as potent as it is permanent. It is on this account, because the power of a Court of Oyer and Terminer is not a perdurable one, nor sufficient even to enforce its own processes in the same way as the Court of King's Bench, and because the king's commissioners are not judges.

"peine, amende, ou confiscation plus forte que  
 "la somme de vingt-cinq livres sterling, jusqu'à  
 "ce que l'approbation du gouverneur ou lieute-  
 "nant gouverneur, ou de la personne qui aura  
 "l'administration du gouvernement de cette pro-  
 "vince, soit signifiée sur icelle, par ordre sous son  
 "seing et sceau ;" et la sixième section mon-  
 "tre encore la différence. Elle ordonne la trans-  
 "mission des procédures des Cours d'Oyer et Ter-  
 "miner au gouverneur, en certain cas, et " non seu-  
 "lement copies de l'indictement, information, ou  
 "charge, et de la défense et autres procédures  
 "dans chaque cause devant elles ; mais aussi de  
 "l'aperçu et substance des points admis en preuve,  
 "et de leur charge aux jurés, et copie du verdict,  
 "comme aussi de toute transaction importante  
 "dans la cause, avec telles observations quelles  
 "pourront juger convenable de faire dans chaque  
 "telle cause ou procès, le tout sous la signature  
 "de la majorité des juges, devant lesquels tel  
 "procès a été porté ;" et les seules exceptions à  
 "cette transmission, se trouvent dans les cas qui ne  
 "s'étendront pas " à la vie ou mutilation, ou trans-  
 "portation, ni à aucune peine, amende, ou con-  
 "fiscation, plus forte que la somme de vingt-cinq  
 "livres sterling." Sur ce chef de mon argument  
 en arrêt de jugement, que cette Cour ne peut pas  
 prendre connoissance de ce cas, je sou mets donc  
 généralement qu'une Cour d'Oyer et Terminer ne  
 possède point de juridiction originelle pour pren-  
 dre connoissance des offenses commises dans le  
 territoire Sauvage, et que le statut du 43me. du  
 roi la donne seulement aux Cours usuelles du Bas  
 Canada, et non pas à aucune autre Cour. Que les  
 Cours usuelles du Bas Canada se trouvent dans les  
 Cours des trois districts érigés par l'acte juridique,  
 savoir, de Québec, de Montréal, et des Trois-  
 Rivières ; qu'une Cour d'Oyer et Terminer ne

s'accorde pas, dans sa formation, ni dans ses pouvoirs, avec ces Cours usuelles, parcequ'elle manque de juges, et la Cour n'est pas permanente, ni puissante, ni complète dans elle-même, et que les Cours usuelles de la province se trouvent continues et puissantes, et complètes dans elle-mêmes. Je me propose présentement de faire attention à la seconde partie de mon argument, savoir, que si cette Cour a juridiction par dessus quelques offenses commises dans les territoires Sauvages, néanmoins elle n'a pas le pouvoir de faire le procès pour aucune félonie. Cet acte du 43<sup>me</sup> du roi, cap. 138, en donnant pouvoir de juger des offenses commises dans le pays Sauvage et endroits de l'Amérique y décrit, aux Cours des provinces du Canada, n'y a pas compris des félonies, et vu que c'est cet acte qui étend la juridiction des Cours de Canada au jugement des offenses commises dans le territoire Sauvage, il faut regarder à cet acte pour voir l'étendue de l'autorité donnée. Regardons donc à l'acte, et nous trouverons qu'il donne de l'autorité seulement dans les cas de crimes et des offenses, et non point de félonie. Dans le préambule nous voyons que ce qui a donné occasion à l'acte est que vu que des crimes et offenses ont été commis dans les territoires Sauvages, &c. pour y remédier. " Qu'il plaise à votre Majesté, qu'il " puisse être statué, et qu'il soit statué par la très " excellente majesté du Roi, par et de l'avis et " consentement des lords spirituels et temporels, " et des Communs assemblés dans ce présent parlement, et par la dite autorité, que depuis, et " après, la passation de cet acte, toutes offenses," (46) the words in English are, "all offences com-

(46) It is on that account, I say, we submit that a Court of Oyer and Terminer is not a Court having power to take cognizance of offences committed in the Indian territories, because it

“mitted within any of the Indian territories, or  
 “parts of America, not within the limits of either  
 “of the said provinces of Upper or Lower Canada,  
 “or of any civil government of the United States of  
 “America, shall be, and be deemed to be, offences of

is in want of almost all the distinguishing characters of the usual Courts. I would further remark that in making provision for Courts of Oyer and Terminer, parliament has distinctly marked the difference between the two species of Courts. The Court of King's Bench of each district, is not only a permanent, and powerful Court, but is also an entire and complete one of itself, having power to execute its sentences. A Court of Oyer and Terminer, is obliged, by the fifth section of the judicature act, to suspend the execution of “every sentence or judgement of  
 “such Court, which shall extend to life or limb or to any penalty, fine, or forfeiture, exceeding the sum of twenty-five  
 “pounds sterling, until the approbation of the Governor, Lieutenant Governor, or person administering the government of  
 “this province shall be signified thereon, by warrant under his  
 “hand and seal at arms.” The sixth section again displays the difference. It directs the transmission of the proceedings of the Courts of Oyer and Terminer to the governor, “not only  
 “of copies of the indictment, information, or charge, and of the  
 “plea or other proceedings in every such cause before them had,  
 “but the scope and substance of the points ruled in evidence, and  
 “of their charge to the jury, and copy of the verdict and of every  
 “material transaction in the cause, together with such observations as they may think proper to make on every such cause  
 “and trial, and the whole under the signatures of the majority  
 “of the judges before whom every such trial was had,” and the only exceptions to such transmission are such cases as “shall  
 “not extend to life or limb or transportation, nor to any greater  
 “fine, penalty or forfeiture than the sum of twenty-five pounds  
 “sterling.” Upon this head of my argument in arrest of judgement, namely, that this Court can not take cognizance of this case, I have thus submitted generally that a Court of Oyer and Terminer does not possess any original jurisdiction to take cognizance of offences committed in the Indian territories, and that the statute of the 43d of the king, bestowed this jurisdiction solely upon the usual Courts of Lower Canada, and not upon any other Court; that the usual Courts of Lower Canada must be sought in the Courts of the three districts, of Quebec, of Montreal, and of Three Rivers; that a Court of Oyer and Terminer does not accord, either in its formation, or in its authority, with the usual Courts, because it has no judges, and that the Court

"the same nature, and shall be tried in the same manner, and subject to the same punishment, as if the same had been committed within the province of Lower or Upper Canada." Dans la troisième section de cet acte, la même description est donnée.<sup>(47)</sup> "And be it further enacted that every such offender may and shall be prosecuted and tried in the Courts of the province of Lower Canada, (or if the governor or lieutenant governor, &c." here follows the provision for the transmitting to the Court of Upper Canada, which it is unnecessary that I should detain the Court by reading, though in this short sentence the phrase, "crimes or offences" is twice made use of, "in which crimes and offences of the like nature are usually tried, &c." In a subsequent part

is not perdurable, nor powerful, nor complete in itself, whilst the usual Courts of the province are permanent, powerful, and complete in themselves. I propose now to pay attention to the second head of my argument, to wit, that if the Court has jurisdiction over some offences committed in the Indian territories, nevertheless it does not possess the power of trying any felony. The act of the 43d of the king, cap. 138, in giving the power of trying offences committed in the Indian territories, and parts of America therein described, to the Courts of the provinces of Canada, has not included felonies therein, and since it is this act that extends the jurisdiction of the Courts of Canada to the trial of offences committed in the Indian territories, we must look at the act to see the extent of the authority given. Looking therefore to the act we shall find that it gives power exclusively in the case of crimes and offences, and not of felonies. In the preamble we see that what gave occasion to the act was, that, crimes and offences had been committed in the Indian territories, &c." for remedy whereof, may it please your Majesty, that it may be enacted, and be it enacted by the King's most excellent Majesty, by and with the consent and advice of the Lords spiritual and temporal and Commons in this present parliament assembled, and by the authority of the same, that from and after the passing of this act, all offences" —

<sup>(47)</sup> In the third section of this act the same description is given.

of this clause, in speaking of the punishment to be inflicted, the term "for such crime or offence" again occurs, and in the conclusion of the third clause, where the power of issuing subpoenas by the Courts, in cases from the Indian territory, is delegated; it is expressly given in relation to the trial of *any crimes or offences* "made cognizable by this act." Dans le second chef de cet acte les mots me paroissent si forts, qu'on ne peut pas se trouver de deux opinions; par ce chef, "il est de plus statué qu'il sera licite au Gouverneur, Lieutenant Gouverneur, ou à la personne ayant l'administration pour le tems d'alors de la province du Bas Canada, par ordre sous son seing et sceau, &c."<sup>(41)</sup> the clause goes on to authorise the commissioning persons to act as civil magistrates and justices of the peace for any of the Indian territories, &c. either upon informations taken or given within the said provinces of Lower or Upper Canada, or out of the said provinces, in any part of the Indian territory, or parts of America aforesaid, for the purpose only of hearing crimes and offences, and committing any person or persons guilty of any crime or offence to safe custody, &c. Encore dans la même clause, en déclarant qu'il sera licite d'arrêter et prendre devant quelque personne commissionnée comme susdit, ou d'arrêter et conduire, ou causer d'être surement conduite en toute hâte convenable, à la province du Bas Canada, chaque personne ou personnes coupable d'aucun crime et offense, (ce sont les mêmes mots vous voyez vos honneurs) et

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(41) In the second section of this act, it appears to me that the words are so strong that there can not be two opinions. By this section, "it is further enacted, that it shall be lawful for the Governor, or Lieutenant Governor, or person administering the government for the time being, of the province of Lower Canada, by commission under his hand and seal, &c."



là d'être livrée à sure garde pour être traitée conforme à la loi. A présent ne reste qu'à savoir, ce que doit être considéré par la loi comme crime et offense? et assurément il n'y a pas de difficulté en disant que les malversations seulement peuvent être appelées des crimes et offenses, et puisque depuis le commencement jusqu'à la fin du statut du 43<sup>me</sup> Geo. III. ce sont les mots " crimes et offenses" dont on fait usage, il est clair que la Cour n'a pas de juridiction sur aucune felonie commise dans le territoire Sauvage, mais seulement sur les crimes et offenses qui sont connus sous le nom de malversations ou *misdemeanors*. J'ai pris la liberté de dire que cette Cour, une Cour d'Oyer et Terminer, ne peut pas prendre connoissance d'aucune offense commise dans les territoire Sauvages et que si elle pouvoit en prendre d'aucune offense, elle ne le pouvoit pas d'aucune felonie, parceque les felonies ne sont pas considérées en loi comme des offenses. Pour soutenir cette opinion je produirai a vos honneurs une decision des douze juges d'Angleterre très recente, dans le cas d'un nommé Shaw, qui fut poursuivi sous l'acte du 42<sup>me</sup> Geo. III. cap. 85. pour un vol commis par lui dans l'Amérique Septentrionale, et les jurés l'ont trouvé coupable. En arrêt de jugement il fut soumis par les avocats du prisonnier que la Cour ne pouvoit pas prendre connoissance sous les mots "*crimes et offenses* commis dans l'Amérique" de *felonies*. On ne nioit pas que les Cours d'Angleterre possèdent généralement le pouvoir de juger, des felonies capitales commises dans l'Amérique sous quelques circonstances, mais l'indictement, étant fondé sur un acte qui donne seulement le pouvoir des *crimes et offenses* commis là, les procédures devroient être sursis. Je pense que la raison en est claire, c'est parceque les "*crimes et offenses*" sont des malversations ou *misdemeanors*, et non pas

des felonies, et Milord Ellenborough, le juge en chef, en prononçant son jugement sur la motion a soutenu la position de monsieur Selwyn, l'avocat du prisonnier, que dans les mots *crimes et offenses*, des felonies n'étoient pas comprises, et ne pouvoient pas être jugées. Il appert ainsi qu'on considère que les Cours d'Angleterre, et ces Cours seulement, possèdent le pouvoir de juger des felonies commises dans certaines parties de l'Amérique.— J'ai ici le rapport au long du cas de Shaw, que je présente à la Cour, et je crois que vos honneurs trouveront que mon récit est correct.<sup>(\*)</sup> (*Two books were offered by Mr. Vanfelson.*)

(\*) Again, in the same section, declaring that it shall be lawful to apprehend and take before any person so commissioned "as aforesaid, or to apprehend and convey, or cause to be safely conveyed, with all convenient speed, to the province of Lower Canada, any person or persons guilty of any crime or offence, there to be delivered into safe custody, for the purpose of being dealt with according to law," you see, your honours, that the same words are made use of. Now all that we have to enquire is, what the law considers as a crime and offence, and certainly there is no difficulty in saying that misdemeanors alone are understood by crimes and offences, and as from the beginning to the end of the statute of the 43d Geo. III. the words, crimes and offences, are used, it is clear that the Court has no jurisdiction over any felony committed in the Indian territories, but only over crimes and offences which are known by the term of misdemeanors. I have taken the liberty of saying that this Court, a Court of Oyer and Terminer, can not take cognizance of any offence committed in the Indian territories, but that if it could take cognizance of offences, it could not of felonies, because felonies are not considered as offences. In support of this opinion, I will produce to your honours, a very recent decision of the twelve judges of England, in the case of a man named Shaw, who was proceeded against under the act of 42d, Geo. III. cap. 86, for a theft he had committed in North America, and the jury found him guilty. In arrest of judgment, the prisoner's counsel submitted that the Court could not, under the words, "crimes and offences committed in America," take cognizance of felonies. It was not denied that, generally, the Courts of England had the power of trying capital felonies committed in America, under certain circumstances, but the indict-

*Chief Justice Sewell.*—I shall certainly be glad to see them, though I think there must be some oversight on the subject. I do not think my Lord Ellenborough could intend to go that length.

*Mr. Vanfelson.*—I think your honour will find that I have stated the decision correctly; it certainly was that the proceedings must be quashed, my Lord Ellenborough holding, with the counsel for the prisoner, that, under the terms *crimes and offences*, which is made use of in the 42d Geo. III. cap. 85, felonies could not be included —

*Chief Justice Sewell.*—Yes, but the decision was confined to that statute. I beg your pardon, if I have interrupted you, I thought you had concluded your observations.

*Mr. Vanfelson.*—I was merely going to have added that the inference I would draw from the opinion of my Lord Ellenborough, in conjunction with the statute of 43d Geo. III. cap. 138, is, that the reason the power of trying for felonies was not extended to the Courts of the provinces by that act, was that the prerogative or authority of doing so was intended to be exclusively possessed by the Courts of the parent state, and their intention is clearly manifested, I think, by the term “*crimes and offences*” being constantly used, which,

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ment being founded upon an act which only gives power to try crimes and offences committed there, the proceedings ought to be quashed. I think that the reason for this is plain, because crimes and offences are misdemeanors, and not felonies; and my Lord Ellenborough, the chief justice, in pronouncing judgement upon the motion, confirmed the position of Mr. Selwyn, counsel for the prisoner, that felonies were not included in the term *crimes and offences*, and therefore could not be tried. Thus it seems that the Courts of England, and those Courts alone, are considered to have authority to try felonies committed in certain parts of America. I have here the report at length in the case of Shaw, at the service of the Court, and I believe that your honours will find that my statement is correct.

according to this late decision, does not include felonies.

*Chief Justice Sewell.*—This decision upon Shaw's case goes no farther than to the individual act then before the judges. It was upon that particular statute that their judgement was given, and, perhaps, you have shewn enough to induce us to say that, under that particular statute, crimes and offences, did not include felonies. We should, I doubt not, be disposed to give a similar interpretation to the act of 42d Geo. III. cap. 85. but we should not go farther than that one act with you. We should certainly say that the 42d Geo. III. cap. 85, could have no greater power than the trial of crimes that may be prosecuted by indictment and by information. It was in fact an extension of an act passed in 11/12 William III. to other cases. The question Shaw's case hinged upon was the point whether, in an act so constituted, felonies were included in the term made use of, and it was said by the judges, no; for this plain reason, felonies can not be prosecuted by information.

*Mr. Vanfelson.*—A présent je soumettrai à la Cour des moyens pour suspendre le jugement, si vos honneurs ne m'accordent pas que j'ai suffisamment établi la motion en arrêt de jugement. Peut-être qu'ils ne sont pas étroitement en règle en arrêt de jugement. Mais, avec la permission de la Cour, je me propose de les présenter incidemment. La première remarque que j'ai à soumettre est celle-ci; que la confession du prisonnier prouvée par le docteur Allan n'est pas une confession fondée en droit, et ne doit pas être reçue. Je dis, regardons à cette confession et nous verrons que c'est une confession avec toute la formalité du statut de Philippe et Marie qui dit que, dans aucune felony quelconque, " le magistrat devant lequel aucune personne sera prise pour *manslaughter* ou

“ felonie, avant qu’il commette l’accusé, le fera  
 “ examiner et prendra l’examen de tel prisonnier,  
 “ et l’information de ceux qui l’apportent concer-  
 “ nant le fait et les circonstances, et les mêmes, ou  
 “ autant d’icelles que sera d’importance, en preuve  
 “ de la dite felonie, fera mettre en écriture, dans  
 “ deux jours après la dite examination, et la même  
 “ écriture sera certifiée de telle manière et forme,  
 “ et à tel tems qu’elle auroit été ou devoit être  
 faite, si tel prisonnier avoit été cautionné,” &c. &c.  
 Voilà la description d’un examen sous l’acte du 2  
 et 3 Philippe et Marie chap. 10. Regardons donc  
 encore cette confession et nous trouverons y de-  
 dans toutes les formalités, que le statut a prescrit.  
 Toutes les formalités, dis je ? Nous y trouve-  
 rons plus que toutes. Dans l’anxiété de la Cou-  
 ronne pour rendre cette confession plus forte, les  
 témoins ont été produits, mais je soumettrois à la  
 Cour que cette circonstance devoit plutôt la dé-  
 truire entièrement, en autant qu’elle étoit originairement  
 une confession conforme aux loix du 1 et 2  
 et du 2 et 3 de Philippe et Marie, qui ordonnent  
 que la confession ou examen d’aucune personne  
 accusée de felonie, sera mise en écriture et certi-  
 fiée par le magistrat qui prend l’examen ; elles  
 n’ordonnent pas que des témoins la certifieront,  
 mais que le magistrat la certifiera. Je dis donc  
 que cette confession étoit une confession formelle,  
 et auroit dû être prouvée par le magistrat qui  
 l’avoit prise, ou qu’elle ne devoit pas avoir été  
 reçue par la Cour. Mais il sera dit par mes sa-  
 vans confrères, les avocats de la Couronne, que  
 la confession n’a été reçue par la Cour que comme  
 une confession privée, et non pas sous le statut.

*Mr. Justice Bowen.*—La Cour l’a reçue comme  
 un papier prouvé d’être dans l’écriture propre du  
 prisonnier, et par lui livré au Comte de Selkirk ;  
 et l’a reçu en droit commun.

*Mr. Vanfelson.*—Oui, votre honneur, mais l'argument que je sou mets très humblement sur icelle est ceci, que vu qu'elle étoit vraiment une confession formelle, elle ne devoit pas avoir été ainsi reçue, et de plus, que la règle de la loi, qui exige toujours la meilleure évidence, fut négligée en la recevant ainsi. Admettons, pour un moment, que la confession fût offerte en droit commun, dans ce cas nous aurions dit, non, cette confession, ce papier, ou par quel nom que vous voulez l'appeler, ne peut pas être reçu, ou prouvé, par le docteur Allan, pour cette raison simple, qu'il n'est pas le meilleur témoin de la circonstance, et la Cour exige la meilleure évidence. La confession n'avoit pas été faite au docteur Allan, le papier n'avoit pas été livré au docteur Allan; non, la confession fut faite, et le papier fut livré, à Milord Selkirk; donc on ne prétendra pas que le docteur Allan est le meilleur témoin. C'est assurément Milord Selkirk, qui est, de notoriété publique, dans ce moment dedans la juridiction de la Cour, et auroit dû être produit par la Couronne. Comme il a déjà été remarqué, dans un argument pendant le cours de ce procès, il ne convient pas à messieurs les officiers de la Couronne, de nous dire que nous pouvions l'avoir produit. C'étoit leur devoir de le produire, pour prouver cette confession, soit comme un magistrat, soit comme la meilleure évidence en droit commun. Et je prie l'attention de vos honneurs à cette proposition que, si nous regardons ce papier comme une confession sous l'acte, donc nous disons qu'elle devoit être prouvée par le magistrat, ou si nous le regardons comme une confession privée, alors nous disons c'étoit le devoir des officiers de la Couronne de la prouver par l'évidence de Milord Selkirk, parceque Milord étoit le meilleur témoin, et à cause de ce que Milord n'a pas été produit, le prisonnier est pris par

surprise. Incidemment, je soumets que la mort actuelle n'a pas été prouvée, et aussi que si un nommé Keveny a été tué qu'il n'est pas prouvé que c'étoit *Owen Keveny*. Le nom de baptême n'est point du tout prouvé. Les témoins ont parlé de Keveny, mais n'ont pas dit *Owen*, plus que *Jacques*, ou *Jean*, ou *Pierre*; c'est simplement d'un nommé Keveny, qu'ils parlent. La confession porte *O. Keveny*; non pas *Owen* plus que *Olivier*: donc je dis qu'il n'y a pas un syllabe de preuve que *Owen Keveny* étoit celui qui fut tué. Si nous nous trouvons forcés d'admettre qu'il y avoit quelqu'un nommé Keveny de tué, le seul témoignage au sujet du nom de baptême nous induiroit à croire que le monsieur au service de la Compagnie de la Baie d'Hudson qui a été tué portoit le nom d'*Olivier*.<sup>(5°)</sup>

(5°) *Mr. F. F.*—I will now submit to the Court the motives for suspending the judgement, if your honours will not allow that I have sufficiently established the motion in arrest of judgement. Perhaps they may not be strictly applicable to go in arrest of judgement, but, with the permission of the Court, I propose to go into them incidentally. The first remark which I shall submit is this. That the confession of the prisoner, proved by Dr. Allan, is not a confession in law, and ought not to be received. Let us look at this confession, and we shall see that it is a confession made with all the formality of the statute of Philip and Mary, which says that, in any felony whatever, the magistrate before whom any person may be taken for manslaughter or felony, before he shall commit the accused, shall cause him to be examined, and shall take the examination of such prisoner, and the information of those who bring him before him, as to the fact and attending circumstances, and the same or as much of them as shall be of importance in proof of the said felony, shall cause to be put in writing within two days after the said examination, and the said writing shall be certified in the same manner and form, and at such time, as the same would or ought to be done, if the prisoner were admitted to bail, &c. &c. This is the description of an examination under the act of the 2d and 3d of Philip and Mary, cap. 10. Let us again look at this confession, and we shall find it invested with all the formalities prescribed by the statute. All the formalities, do I say? We shall find more than all. The anxiety of the Crown to make this confes-

*Solicitor General.*—I would submit that the testimony of Mr. Miles M'Donell so completely removes all difficulty as to the person killed being, as he is named in the indictment, and as the jury, by their verdict, have declared, *Owen Keveny*,

sion stronger was such that witnesses to it have been produced, but I would submit to the Court that this circumstance ought rather wholly to destroy it, inasmuch as it was originally a confession according to the laws of 1st and 2d, and 2d and 3d of Philip and Mary, which direct that the confession, or examination, of any person accused of felony, shall be reduced to writing, and certified by the magistrate taking the examination; they do not direct that the witnesses shall certify it, but the magistrate. I say therefore that this confession was a formal confession, and ought to have been proved by the magistrate who had taken it, or that otherwise it ought not to have been received by the Court. But it will be said by my learned brethren, the officers of the Crown, that the confession was only received by the Court as an individual confession, and not one under the statute.

*Mr. J. B.*—The Court received it as a paper proved to be in the hand-writing of the prisoner, and by him delivered to the Earl of Selkirk; and received it at common law.

*Mr. V. F.*—Yes, your honour, but the argument which I very respectfully submit is this, that, seeing that this confession was in fact a formal confession, it ought not to have been received at common law, and moreover that the rule of law which requires that the best evidence shall always be produced was disregarded when it was so received. Admit for a moment that the confession had been offered at common law, in that case we should have said, “no, this confession, this paper, or whatever you please to call it, can not be received, or proved by Dr. Allan, for this plain reason, that he can not be the best witness to the circumstance, and the Court requires the best evidence.” The confession was not made to Dr. Allan, the paper was not delivered to Dr. Allan; no; the confession was made, and the paper was delivered, to my Lord Selkirk, therefore it can not be pretended that Dr. Allan is the best witness. It is most assuredly my Lord Selkirk, who, it is a matter of public notoriety, is within the jurisdiction of the Court, and ought to have been produced by the Crown. As it has been remarked in the course of an argument which took place during this trial, it does not become the officers of the Crown to tell us that we might have produced him. It was their duty to produce him to prove this confession, whether as a magistrate, or as the best evidence at common law. And I beg your honour's attention to this posi-



that doubt could hardly be entertained upon the subject. Indeed, whatever might exist before the verdict, I should consider to be legally removed or set at rest after the recording a verdict finding the prisoner guilty in manner and form as he was charged in the indictment.

*Mr. Stuart.*—I beg to remark, in reply to the Solicitor General, that we are addressing ourselves to the Court upon the law, and every thing connected with the record is a matter of law. To his observations relative to Mr. M'Donell's testimony setting at rest all difficulty upon the identity of the person said to have been killed, and the person once in the service of the Hudson's Bay Company, I do not see that it can obviate even the smallest. The utmost length Mr. M'Donell went was, that a man named Owen Keveny was some time in the service of the Hudson's Bay Company, and that some two or three years before, he saw him, but has not since. How that is to remove or set aside all, or any, difficulty as to the man killed not be-

tion, that if we look upon this paper as a confession under the statute, we say, that in that case, it ought to be proved by the magistrate; and that if we look upon it as an individual confession, then, we say that it was the duty of the Crown officers to prove it by the evidence of my Lord Selkirk, because his lordship was the best witness; and inasmuch as his lordship has not been produced the prisoner is taken by surprise. Incidentally, I submit that the actual death has not been proved, and also that, if a man named Keveny has been killed, it yet has not been proved that it was *Owen Keveny*. The christian name has not been proved at all. The witnesses have spoken of Keveny, but have no more said *Owen*, than *James*; or *John*, or *Peter*; it is simply of one named Keveny that they spoke. The confession has it *O. Keveny*; not *Owen* any more than *Oliver*, I say therefore there is not a syllable of proof that *Owen Keveny* was the man that was killed. If we find ourselves compelled to admit, that there was one named Keveny killed, the only evidence on the subject of the christian name would induce us to believe that the gentleman in the service of the Hudson's Bay Company who was killed, bore the name of *Oliver*.

ing proved to be *Owen Keveny*, or how it has a tendency to shew that it was *Owen Keveny*, I confess I can not comprehend.

*Mr. Justice Bowen.*—I confess I sit, and have for some time sat, very reluctantly, to hear an argument upon either point, as I consider them both to be settled in a manner which precludes us from hearing them, namely, they have been decided by the voice of the country, whose peculiar right, indeed their exclusive right, it is to decide. They have, in their verdict finding the prisoner guilty in manner and form as he stood charged in the indictment, declared that *Keveny* is dead, and that it was *Owen Keveny*, whom the prisoner aided *Mainville* to kill, because the indictment charged him with having helped, aided, and assisted, *Mainville*, to kill *Owen Keveny*, not *Oliver*, or any other *Keveny*, but *Owen Keveny*. On the point of law involved in this objection, relative to the proof or description of the deceased's name, it is hardly necessary that I should say any thing, thinking as I do that we ought not to hear you on this part of the subject at all. If there is a material error, so as to render the indictment insufficient, the Court will feel itself bound to arrest the judgement. But supposing that the question had been raised at an earlier period, that the jury had not, by their verdict, said *Owen Keveny* was killed, what would have been the effect? The object of description is certainty, and it might be a question whether the indictment is not sufficient for that purpose. It is not an uncertainty as to the defendant himself, and we know that it has been adjudged that an indictment for an assault, against John, parish-priest of D. in the county of C. is good, without mentioning his surname; this is mentioned in 2nd Hawkins, cap. 25, sect. 1 and 2, and he argues if a wrongful surname of the

defendant himself will not vitiate an indictment as hath been more fully shewn, section 69, surely *a fortiori* the omission of the surname of any other person will not vitiate it, especially where such person is otherwise described with such certainty that it is impossible to mistake him for any other. I merely mention this for your consideration, but, returning to the question of how far we ought to hear you at all, I am clearly of opinion that our entertaining it must imply that we have legal doubts of the correctness of the jury's finding, that we consider it a verdict against evidence, or contrary to his honour, the chief justice's, directions; our hearing you certainly implies that doubt exists in our minds, now, if doubt does not exist in our minds, we ought not to hear you argue what the jury have solemnly decided, according to my opinion.

*Mr. Vanfelson.*—I submit to your honours that I am not beyond the legal right of argument upon the point, and that it is one, which, in strict legal construction I am privileged to argue, and upon this ground, I would again argue, that the finding of the jury, with no evidence of the actual death, is contrary to the opinion of the greatest and soundest lawyers that ever practiced at the bar or ornamented the bench. Lord chief justice Hale is exceedingly pointed on this subject; he says, vol. 2d. page 290. “I would never convict any person of murder, or manslaughter, unless the fact was proved to be done, or at least the body found dead, for the sake of two cases, one mentioned in my Lord Coke, P. C. cap. 104, page 232, a Warwickshire case, which is mentioned in a note. That case was this, an uncle, who had the bringing up of his niece, to whom he was heir at law, correcting her for some offence, she was heard to say, ‘good uncle, do not kill me,’ af-

" for which time the child could not be found,  
 " whereupon the uncle was committed upon sus-  
 " picion of murder, and admonished by the justices  
 " of assize to find out the child by the next assizes,  
 " against which time he could not find her, but  
 " brought another child as like her in person and  
 " years as he could find, and apparelled her like  
 " the true child, but, on examination she was  
 " found not to be the true child, upon these pre-  
 " sumptions he was found guilty, and executed,  
 " but the truth was, the child, being beaten, ran  
 " away, and was received by a stranger, and af-  
 " terwards, when she came of age to have her  
 " land, came and demanded it, and was directly  
 " proved to be the true child." The other is thus  
 stated by the learned and venerable judge. " an-  
 " other that happened in my remembrance in Staf-  
 " fordshire, where A. was long missing, and upon  
 " strong presumptions, B. was supposed to have  
 " murdered him, and to have consumed him to  
 " ashes in an oven, that he should not be found,  
 " whereupon B. was indicted of murder, and con-  
 " victed and executed, and within one year after,  
 " A. returned, being indeed sent beyond sea by  
 " B. against his will, and so, though B. justly de-  
 " served death, yet he was really not guilty of  
 " that offence for which he suffered." Ces deux  
 cas induisoient ce grand et très savant juge à dire  
 que, dans un cas de meurtre ou d'homicide, il ne  
 voudroit jamais condamner, à moins que le fait  
 fût absolument prouvé avoir été commis, ou du  
 moins que le corps mort fut trouvé.<sup>(51)</sup>

*Mr. Justice Bowen.*—Well, now apply your law

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(51) These two cases induced that great and very learned judge to declare, that in a case of murder or homicide, he would never convict, unless the fact was absolutely proved to have been committed, or that at least the dead body had been found.

to the case before us; you remember also there are his own confessions.

*Mr. Vanfelson.*—Oui, mais je dis que sa confession n'a pas été prouvée selon les règles. <sup>(12)</sup> Hawkins says, book 2d. cap. 46, sect. 44, "but if a confession be not taken in writing, parole testimony may be given of it, and the prisoner thereon convicted, although it is totally uncorroborated by any other evidence." Ici la confession est écrite, et je soumets que l'évidence verbale du Docteur Allan est contre la règle. Otez la confession du prisonnier, et il n'y a pas un syllabe de témoignage de la mort de Keveny. Les circonstances qui sont considérées par Milord Hale comme nécessaires de prouver, sont; la mort actuelle, par le corps ayant été trouvé, ou que le meurtre aye été vu quand il fut commis, et la sagesse de cette opinion est bien marquée par un cas qui se trouve dans Leach, tom. 1, Cas 127. C'est le cas du Roi contre Jane Warrickshall, dans une note; un où trois hommes—mais je le lirai. <sup>(13)</sup> "Three men were tried and convicted for the murder of Mr. Harrison of Campden in Gloucestershire. One of them, under a promise of pardon, confessed himself guilty of the fact. The confession was not, therefore, given in evidence against him,

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<sup>(12)</sup> Yes, but I say that his confession was not proved in conformity with the rules.

<sup>(13)</sup> Here the confession was written, and I submit that the parole evidence of Dr. Allan is against the rules; now, if we take away the confession of the prisoner there does not remain a tittle of evidence of the death of Keveny. What my Lord Hale considers it necessary should be proved is the actual death, either by the corpse having been found, or the murder having been seen to be committed; and the wisdom of this opinion is confirmed by a case in Leach, vol. 1. case 127. It is the case of the King versus Jane Warrickshall, in a note, a case where three men—but I will read it—

“ and a few years afterwards it appeared that Mr. Harrison was alive.” Dans ce cas l'homme fut malheureusement exécuté, et après, nous voyons que Harrison se trouvoit en vie. Il y a un autre cas de la même nature, duquel je me souviens à ce moment ; c'est le cas d'un homme qui, dans une querelle avec un autre est tombé ou fut jetté dans une rivière, et n'ayant pas paru pour quelque tems après, l'autre (étant jugé) fut trouvé coupable de sa mort. Quelques années après, l'homme qu'on croyoit avoir été noyé, fut découvert en vie. L'application que je désire faire est bien claire. C'est que dans le cas présent, le corps mort n'a pas été vu, ni l'accomplissement du crime, et que, la confession exceptée, il n'y a pas un syllabe d'évidence de la mort actuelle, et de plus, que cette confession elle même n'est pas évidence de la mort d'Owen Keveny. Je soumets avec confiance, vu que j'ai l'opinion d'un juge aussi savant que Milord Hale, que, dans un cas de meurtre, la seule certitude de la mort de l'individu chargé d'avoir été tué, est qu'on avoit vu commettre le meurtre, ou du moins que le corps mort avoit été trouvé. Je dis qu'il est absolument nécessaire, avant de trouver un prisonnier coupable de meurtre, que la mort actuelle soye incontestablement prouvée, et dans ce cas, je soumets, qu'elle n'est pas prouvée jusqu'au moment présent. Avec ces cas devant nos yeux, nous devrions être très circonspects. C'est sur ces fondemens que j'ai l'honneur de soumettre les motions, <sup>1<sup>ment</sup></sup> de faire un procès nouveau au prisonnier, et si la Cour ne l'accorde pas, je présente des observations en arrêt du jugement. Mon savant confrère Stuart me suivra, et il expliquera à la Cour plus au large les autres raisons que nous avançons pour soutenir ces motions. Mes argumens se sont portés à l'étendue suivante, sur les deux propositions ; que la Cour ne possède pas le

pouvoir de faire les procès pour les offenses dans le pays Sauvage, ou si elle en a le pouvoir pour les petites offenses, qu'il ne s'étend pas à aucune félonie; et, sur la seconde, que la confession n'auroit pas dû avoir été reçue, que la mort actuelle de Keveny n'a pas été prouvée, qu'il n'y a pas un mot de témoignage pour prouver le meurtre d'Owen Keveny, et qu'il n'est pas certain que dans ce moment Owen Keveny ne se trouve encore en vie. Il faut que je fasse mes remerciemens à la Cour pour son attention, et j'espère que les motions que j'ai soumises seront du bénéfice au prisonnier.<sup>(54)</sup>

(54) In this case unfortunately the man was executed, and afterwards we see Harrison was found to be alive. There is another case of the same nature which occurs to me at the moment, the case of a man who, in a scuffle with another, either fell, or was thrown, into a river, and who not making his appearance afterwards for some time, the other (being tried) was found guilty of his death. Some years afterwards the man, who was believed to have been drowned, was discovered to be alive. The application I am desirous of making is very plain. It is that in this case, the dead body has not been seen, no more than the perpetration of the offence, and that, with the exception of the confession, there is not a tittle of evidence of the actual death, and further, that this confession even is not evidence of the death of Owen Keveny. I submit with confidence, considering I have with me the opinion of so learned a judge as my lord Hale, that, in a case of murder the only certainty there can be of the death of the individual charged to have been killed, must arise from the murder having been seen, or at least from the dead body having been found. I say that it is absolutely necessary, before finding a prisoner guilty of murder, that the actual death be undeniably proved, and in this case I submit that it has not been proved up to the present moment. With these cases before our eyes we ought to be extremely cautious. It is upon these grounds that I have the honour to submit the motions; in the first place, for a new trial for the prisoner, and if the Court does not grant that, I offer observations in arrest of judgement. My learned brother, Stuart, will follow me, and will more fully explain to the Court the other reasons which we allege in support of the motions. My arguments upon the two positions go to the length; that the Court is not possessed of any authority to try offences committed in the Indian territories, or, if it has such

*Chief Justice Sewell.*—Before Mr. Stuart commences his arguments, I wish to remark that in all the cases you have alluded to relative to circumstantial evidence, the obvious question of the actual death must have been left to the jury. In this case, the question of the actual death of the man, and who it was that was killed, (if any person was,) went to the jury, surrounded with all the circumstances which, in your opinions, lessened or destroyed their weight and credibility. The evidence of the death, of who killed, of who was present, aiding, and who it was that was killed, have been credited by the jury, who have found the prisoner guilty, in manner and form as he stood charged in the indictment. It is their verdict, and on circumstances upon which they were the sole judges.

*Mr. Justice Bowen.*—In stating there was no evidence but the prisoner's own confession, I think you appear to have forgotten the evidence of the two voyageurs, Faye and La Pointe, as well as the circumstance of the clothes being in the canoe and the division of the *butin*.

*Mr. Stuart.*—The first question before the Court, appears to me to be, can a new trial be granted in a case of felony? or, to meet more directly Mr. Solicitor General's objection, the enquiry is; can the Court entertain a motion for a new trial in a case of felony? Upon the former part or enquiry;

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a power for smaller offences, it does not extend to any felony; and further that the confession ought not to have been received, that the actual death of Keveny has not been proved, that there is not one word of evidence which goes to prove the murder of Owen Keveny, and that it is not at all certain that Owen Keveny is not at this moment still alive. I am bound to make my acknowledgements to the Court for the attention with which I have been heard, and I hope that the motions I have submitted will be of benefit to the prisoner.



can a new trial be granted in a case of felony? I find a dictum of my Lord Kenyon that it could not, but I find also a later decision than that of my Lord Kenyon, in East, p. 416, in which it is said that the point is not settled in England, but that the impression seemed to be that there could not. Having thus produced before the Court contending authorities, the one, the dictum of a venerable and learned judge, entitled unquestionably to our respect, but, with great deference, notwithstanding all my respect, I remember that it is only his dictum, not given as a judgment after hearing; in solemn argument, all that could be urged in support of a contrary opinion, but incidentally expressed in considering a case of a very different kind, the other, an undoubted authority, declaring that the point has not yet, (at a period subsequent to the dictum of my Lord Kenyon) been settled in England, I conceive the door is now open to argument in its broadest shape. I shall trespass shortly on the time of the Court to make a few observations on the question raised as to whether a motion for a new trial in capital cases can be entertained? To me it appears quite clear that they can, and why should they not? Motions are heard daily for new trials in civil cases, and daily are granted, and I humbly contend that, in accordance with, the mild and humane spirit of British law, they should be more fully entertained in criminal, than in civil, cases. For what is the distinguishing feature of our criminal jurisprudence?—a carefulness of life, but refuse to entertain a motion for a new trial, and our civil code is infinitely more careful in protecting our property, than our criminal law will be in preserving the lives of the accused. Another reason in support of my position that a motion for a new trial ought to be even more fully entertained in criminal than in civil cases,

is this, that if a jury in a civil case are liable to a writ of attain for corrupt conduct, whilst in criminal cases a writ of attain will not lie against a jury, *a fortiori*, I say, the grounds for entertaining a motion for a new trial, are much stronger in a criminal than in a civil case." If the motion for a new trial can not be entertained, or granted, in criminal matters, there is no remedy, that is no legal remedy, to the prisoner, however wrongfully convicted. Suppose a conviction takes place by illegal evidence, or as a strong case, suppose a conviction takes place without any evidence, and such cases in illustration of my proposition I have a right to put. Suppose then, I say, a capital conviction with no evidence to justify it, if a new trial can not be granted, then there is no remedy, because that can not be pleaded in arrest of judgment, or form a ground upon which the Court would hear an argument in support of a motion in arrest of judgment. I am aware it may be said, that in such a case the effect, with reference to a prisoner, would be the same; as, under such circumstances, an application might be made to the power of the Crown, and that it would be granted. I admit that the application might be so made, and, under such circumstance, doubtless would be granted, but it is only in the shape of a motion for a new trial, that the improper finding of the jury can be brought before the Court, and shall there exist a power to give redress in civil, where property alone is concerned, greater than is admitted in criminal cases, which affect the life? Again, in trials, let them be conducted with whatever caution they may, superintended by whatever talent and integrity, error may creep in, misdirection may be given, or omissions may be made, by the best and most enlightened judges, whilst, by a peculiar anomaly, in criminal cases no counsel

is heard on behalf of a prisoner. All that the jury hear, for the purpose of assisting their judgments either on the law or facts of the case, though so necessary in most criminal cases to a prisoner that his counsel should be heard, is the judge's exposition of the one and the other. Far is it from my intention to do any thing beyond addressing a general argument to the Court upon this point, yet I may be permitted to urge that, as the best and most enlightened may err, the door ought to be opened wider, rather than closed, to the introduction of the only remedy that can be applied to the consequences of such error, omission, or misdirection, and as the consequences of either are infinitely more important in the one than in the other, there is, I imagine, tenfold more reason for granting a new trial in criminal, than in civil cases. I call upon the learned Crown officers, in opposing this doctrine, to shew me the principles upon which their opposition is founded. I call upon them, after I have shewn that the point is as yet unsettled in England, to substantiate by argument, in the absence of authority, the (to my mind) strange proposition, that a remedy shall not be applied to an error affecting the life of a man, whilst they would extend it to every case of mere property. I call upon them to say why the mouth that has been closed during a prisoner's trial for his life (by, as I said before, a peculiar anomaly, which does not allow counsel to be heard on his behalf,) is to remain sealed after his conviction, whatever may have been the error, omission, or misdirection that occasioned it. I contend that the entertaining a motion for a new trial in all cases, criminal as well as civil, is in the discretion of the Court, who will grant or refuse it, as appears to them most consonant to the ends of justice, which I take to be the governing principle of all judicial proceedings.

*Mr. Justice Bowen.*—Admitting your principle for a moment to be correct, what would you gain? If prisoners are to be entitled to a new trial, must not the Crown be equally so, and where is the system of new trials to end?

*Mr. Stuart.*—I beg the Court's pardon, but it is agreed on all hands that a verdict of acquittal ends proceedings. I might refer to innumerable authorities that a verdict of acquittal can not be disturbed, upon the equitable and humane maxim, that "a man shall not be brought into danger for one and the same offence more than once." But let that leading maxim of British jurisprudence be set aside, still the inconvenience would be no greater than in civil cases, where verdicts are set aside, and new trials granted. At any rate the prisoner could be in no worse situation than he is at present, though I should imagine, as all indulgencies are *in favorem vitæ* that though a new trial should be granted to a prisoner, it would be refused to the Crown if asked. The different situation in which the Crown stands, from its power and its only object in putting one of its subjects upon trial, precludes the idea that they would ever ask for a new trial, were the principle of granting them to prisoners to become a customary practice. But that the Court upon strict legal principles may set aside the verdict, and grant a new trial in cases of felony, is a doctrine in support of which I refer, with confidence, to Viner, page 478, word, *trial*; which will shew that a prisoner may be discharged of a verdict, and that a new trial can not be granted where the defendant is acquitted, but may where he is convicted in a criminal and capital case. It is found in the 2d section, under the general head of, "*new trial granted, in what cases, in respect of the action being criminal.*" "A new trial will not be granted where the defendant is acquitted in cri-

“minal and capital cases, but otherwise it is, where  
 “he is convicted”—Liev. 9. Mich. 12 Car. II. B. R.  
 Anon.—Indeed there is a case of a defendant being  
 discharged of a verdict, and receiving a new  
 trial as late as 26th Elizabeth, the doctrine, there-  
 fore, notwithstanding the dictum of my lord Ken-  
 yon, for whose decisions no man entertains a more  
 profound respect than myself, I consider at least  
 to be open to discussion, and the more especially  
 as I have shewn to the Court that at a very late  
 date the question was not considered as settled in  
 England.

*Chief Justice Sewell.*—In the case you refer to, in  
 the time of Elizabeth, the new trial was granted  
 before the recording of the verdict, in such a case  
 probably the same thing would be done again.  
 Upon a disagreement of the jury, the defendant  
 was asked if he would be discharged of the jury  
 and their verdict, and he agreed to it; he was tri-  
 ed by another jury upon the same indictment, was  
 found guilty, and had judgement to be hanged.  
 It is Mansell's case, I presume, that you referred  
 to.

*Mr. Stuart.*—It was, your honour.

*Chief Justice Sewell.*—Then it is one of another  
 kind, as a new trial was granted there, before the  
 verdict was recorded. The verdict of the jury  
 has been recorded in this case, and the question is  
 how can it be set aside?

*Mr. Stuart.*—There is another in Hawkins,  
 where a new trial was granted after the verdict  
 had been recorded. I can not, at this moment, re-  
 fer to the page of Hawkins, but I will send it to  
 your honours.

*Chief Justice Sewell.*—Do, if you please, for I do  
 not recollect it.

*Mr. Stuart.*—I will. I speak with confidence on  
 the subject, as I was looking at it this morning.

and it will be seen that, in various instances, from time immemorial, new trials have been allowed in capital criminal cases, and although some venerable and learned judges may have entertained doubts as to the propriety in any case of so doing, and others, as my lord Kenyon, may have gone the length of saying that it could not be done, yet, as I have shewn, amidst this contrariety of opinion, that the question is not settled in England, nor considered to be so, there can, I imagine, remain no doubt on the minds of the Court, as to its competency to entertain a motion to set aside the verdict, and grant a new trial, in the present case. My argument on this part of our propositions will, therefore, be to enforce the expediency and justice of the motion being granted. I would just remark, in reference to his honour, Mr. Justice Bowen's hint as to new trials being moved for on the part of the Crown in cases of acquittal, that the Crown, or the King, in whose name all criminal prosecutions are conducted, is not interested in the indictment farther than the common justice of the case, and that, if twelve of his subjects say his peace, crown, and dignity, have not been infringed upon, it is reasonable to suppose that he will be satisfied with such finding, and this principle has been recognized and acted upon when new trials have been moved for in cases of acquittal in misdemeanors, 3d Salk. 362. pl. 4. Having thus cleared away the difficulty raised by my learned friend, the Solicitor General, upon the question of competency, we enter at once upon the motion to set aside the verdict of conviction, and grant a new trial in the case of Charles De Reinhard. It was necessary thus to clear the way to this motion, because it is only before a motion in arrest of judgment that it can be heard. Should we be refused an arrest of judgment, it would be too late then to

submit one for a new trial. The rule is "one shall not move for a new trial after motion in arrest of judgment; but, after motion for a new trial, he may move in arrest of judgment." In support of the motion which we thus submit, I have the honour to contend. —

*Chief Justice Sewell.*—Had you not better, Mr. Stuart, combine your objections, that is, state all you have to offer on any particular point, whether it may refer to the evidence or the direction of the Court. It will have a tendency to abridge the argument, and save time, without excluding any thing you may be desirous of offering.

*Mr. Stuart.*—That is the course I propose to adopt, and on the motion to set aside the verdict, I shall contend that the paper purporting to be the confession of the prisoner, and admitted to be proved in evidence on his trial, was a confession taken, upon the statute, before a magistrate, as appears from the very face of it, and was irregularly received as a confession at common law. I contend that this confession, if not used as a confession under the statute, ought not to have been permitted to be used at all. I know it will be said, confessions are admissible at common law, and this was received at common law, but I contend that, if a confession has been taken before a magistrate, it can not be admitted as evidence at common law, nor, till proved by the magistrate, or his clerk, at all. If it can, then all former decisions upon the subject must be erroneous which have refused to admit confessions made before a magistrate, unless proved by the magistrate, or his clerk. It was not competent to the Crown officers to turn round and say; we offer this at common law, and not under the statute. It would not have been competent to them, when we objected to any but the magistrate or his clerk prov-

ing the paper-writing which purported to be the prisoner's confession, to say; we are going to prove by this witness that the prisoner wrote the paper and delivered it to A. B. or C. There can be no doubt but, in that case, the Court would have said, we will not receive it except you bring A. B. or C. because A. B. or C. would be the best evidence, which is in every case, criminal or civil, what the law invariably insists upon. Had the best evidence been produced, either regarding it as a confession at common law, or under the statute, still the effect would have been the same to the prisoner, as the same individual would have been produced, the Earl of Selkirk. Knowing of this paper-writing, we concluded that, if attempted to be made evidence against the prisoner, it could only be effected by Earl Selkirk. If it was to be made evidence as a confession under the statute, he must appear himself, being the magistrate, as it was well known to us he had no clerk; if it was to be offered as a paper-writing, and, therefore, good evidence at common law, still Lord Selkirk must appear as the witness, because it had been delivered by the prisoner to him, and he was therefore the best evidence, which is what the law insists at all times upon having produced. There can be no question that, had this paper been in the hand-writing of Lord Selkirk, or his clerk, that it would not have been received, unless they were here to prove it, and the circumstance of its being in the prisoner's writing, does not alter the argument at all; no greater legal certainty is given to it. The acts of Philip and Mary do not require that the magistrate should take the examination in his own writing, but that the examination shall be put into writing, and signed by the magistrate, and, upon the trial, shall be proved by him, or his clerk. An additional reason might



be urged from the general necessity of proving that at the time of making the confession the person was free, or if not, that the restraint imposed was a legal restraint, and that no improper inducements were held out to obtain the confession, and who is to prove this but the magistrate? If the confession is to be received at common law, still, upon the principle of having the best evidence, the necessity presents itself again, who can best prove that no promise or menace was made use of to induce a confession? Certainly the answer is immediately, he to whom the confession was made, and applying this reasoning to the present case, either as a confession at common law, or one under the statute, it was necessary to have produced the Earl of Selkirk. But I go a step farther, and leaving the general rule, I say that, in the present case, it was specially requisite, from the very extraordinary nature of the circumstances which are connected with it, that Lord Selkirk should have been brought here by the Crown, if he did not come here himself as a magistrate with his returns, &c.—though it might have well been expected that his own anxiety, in a case where personally he was so much, and his own honour so deeply concerned, would have outstripped the tardiness of a legal obligation to appear—for, at the time of making this confession, De Reinhard was under restraint, a restraint imposed by my Lord Selkirk, the which, if not imposed by magisterial authority, must necessarily have been an illegal duress, and had been so from the 19th of October, a period of ten days, the confession being delivered to Lord Selkirk upon the 28th, and three or four days after he was set at liberty, a very strong circumstance certainly, and one upon which had my Lord Selkirk been here, as it was his duty to have been, and, as his own feelings, I

should have imagined, would have urged him to have been, and in that witnesses box he might, (for he only could,) have given us some information. At present, it only can be mentioned as a circumstance peculiar to the case itself, and one which I greatly regret that in deviating from the general, and as I have always thought the unalterable, legal rules that confessions taken before a magistrate must be proved by the magistrate, and that upon all matters, whether civil or criminal, at common law, the best evidence is required, we are left in the dark, exposed to all the suspicions which will suggest themselves as to what those circumstances might be which first led to the imprisonment of this individual, and after he had confessed himself to be guilty of a murder, what those circumstances were which occasioned — what? his being confined more closely? guarded more carefully? No; but what those circumstances were which, after this confession, occasioned his being set at liberty. All this information, so important not only to the prisoner, but to the cause of substantial impartial justice, we are shut out from by a course which, we contend, exposed the jury to the influence of that which although allowed to be given in evidence, was not legally so, and, therefore, the verdict is in fact against evidence. Our objection has a very narrow compass. The confession was a confession before a magistrate, upon the statutes of Philip and Mary, which required the magistrate or his clerk to prove it before it could legally be received as evidence, or the confession was a paper in the hand-writing of the prisoner, and by him delivered to Lord Selkirk, and to entitle it to be received as evidence, it was requisite that the best evidence should be produced. We say, in either case, it was not proved according to law, for as a confes-

sion under the statute, having been put into writing, parole testimony relative to it was not admissible, and as a confession at common law, we allege that the testimony of doctor Allan was not the best evidence which the nature of the case allowed to be produced. Lord Selkirk is within the jurisdiction of this Court, and could have given better evidence than doctor Allan. This part of my argument I conclude by saying, that, in our judgments, the proof which the Court received of the paper-writing was not according to law, there is, however, one point more, connected with the confession which I have omitted noticing, but I beg, before proceeding to the next objection I have to submit to the Court, that I may be permitted to advert to it. It is that the Crown, having offered a paper-writing, and succeeded in getting it admitted as good evidence against the prisoner, the whole ought to have been admitted; the entire paper should have been received, the entire paper should have been given to the jury, we argue that it was not in the power of the Crown, after producing a paper, to sever it. We contend that all must go, or rather should have gone, to the jury, or that none should have been handed over to them. We further submit that it is no answer to say that the confession was received at common law, and therefore the certificate of the magistrate was unnecessary for the jury. We say, and feel ourselves warranted in so doing, that all that was on the paper was proper evidence to go to the jury, if any part of it was entitled to find its way to them, and that it was not competent to the Court to enquire what the contents of any part of it might be; if a discovery was made that a part was a magistrate's certificate, that it contained his examination of a person making a confession, or that it was the confession itself, still the certificate

ought, as forming a part of the paper produced, to have gone to the jury. I will put a case, suppose this certificate stated that under his examination the prisoner had been contumacious, and had refused to answer certain questions, and thereupon had been stretched upon a rack, and told he should suffer its pains unless he answered the questions put to him, and being relieved, he then wrote his confession; on his trial it is made evidence at common law against him, being proved by some bystander, I should ask, ought not such a certificate to go to the jury? would it be any answer to say; the paper the prisoner wrote and delivered to the magistrate is received at common law, and therefore the magistrate's certificate is not required, it is not evidence. No, certainly not; nor, as we contend, is it in this case. It would have been proved and received as evidence, had the confession been made so under the statutes of Philip and Mary, and though received as a paper-writing at common law, ought not, according to our view of the subject, to have been kept from the jury.

The second point which I shall have the honour to present is one that, of course, I offer with great diffidence. It is that this honourable Court, in its charge to the jury, misdirected it upon two points; first, as to the limits of his Majesty's province of Upper Canada, and also to the interpretation of the western boundary, as settled by the act of 1774, in its explanation or construction of the term *northward*, which your honour directed the jury, must be considered to mean *due north*. In renewing, to a certain extent, that which your honours might consider as already decided, I beg to mention that it is not my intention to touch upon the former part of the objection, because it was argued to its full extent, and your honours decided that our view of the question was wrong, but the latter

objection was by some means omitted. It will be in the recollection of your honours that, on that occasion, we contended that the province of Upper Canada exceeded in its limits the extent which bounded the antient province of Quebec. That point, may it please the Court, having been discussed, and so positive an opinion given on it in your honours decision, will be completely abandoned, but that which it is my intention to address the Court upon, is the construction given to a part of the boundary, set forth in the preamble to the act, usually called the Quebec act. I will read a part of these boundaries, so as to introduce the point I intend to argue fairly to the Court; after tracing the line to the northwest angle of the late province of Pennsylvania it goes on to describe its course thus, "and thence along the western boundary of the said province until it strikes the river Ohio; and along the bank of said river westward to the banks of the Mississippi, and northward to the southern boundary of the territory granted to the merchants adventurers of England trading to Hudson's Bay, &c. &c." Upon this portion of the boundary it is that I propose to found my observations, and the objection which, with great deference certainly, I start to the opinion which your honour holds is, that *northward*, means to continue along the banks of the Mississippi, according to the course of that river, which is in a *northward* direction, though not *due north*, and we consider this to be the construction warranted by law and usage; and, (I again beg that I may be understood as speaking with the greatest deference,) more consistent with the intentions of the act as expressed therein.

*Chief Justice Sewell*.—That, Mr. Stuart, is the same point which we have already decided. We heard you and Mr. Vallière in solemn argument

upon all the points connected with the boundaries, both in relation to the Upper province and the American line, and gave you our solemn decision upon them. We have followed it up by taking the verdict of the jury upon that solemn decision.— That verdict declares that the offence was committed in the Indian territories, or parts of America, not within the limits of either of the provinces of Upper or Lower Canada, or of any civil government of the United States of America, and the jury so found, after we had charged them on the law of the subject, and such as we laid them down were to be considered by them the boundaries of his Majesty's provinces of Upper and Lower Canada in relation to each other, and to the United States of America. We can not alter that; it must be to another quarter that you must make your appeal, to that quarter where this case must finally end; indeed, after having given our decision, you ought not to raise the question. The jury, upon our directions as to the law, have decided the fact, with which we did not meddle, having no authority to do so. They have decided that, according to our defining of the boundaries of Upper Canada, and the line of separation between his Majesty's possessions and the late provinces, the Dalles are in the Indian territory, or parts of America, not within the province of Upper or Lower Canada, or of any civil government of the United States of America. If we have done wrong, you know how to remedy the error, and you may depend that every opportunity will be given to enable you to avail yourselves of the mercy of the Crown, but we can not, without legal grounds are shewn to us, disturb their verdict. We can not hear you upon the point of jurisdiction again, the question being, as far as lies in us, already settled.

*Mr. Justice Bowen expressed his entire concurrence.*

*with the chief justice, and added, that he had a long time sat with sensations of regret to hear the discussion on the former point; that its admission was greatly at variance with his own sense of propriety although he had not interfered.*

*Mr. Stuart.*—If that is the opinion of the Court, I shall not presume to urge it farther, but proceed at once to the third point, which I propose to adduce in support of my motion for a new trial, viz. that no legal evidence has been produced to the jury of the actual death of Owen Keveny.

*Chief Justice Sewell.*—I can not hear you, Mr. Stuart, upon that point either. You know that it has been equally solemnly decided, and by the same authority. It was a fact; and solely with the jury, and they have decided that the death has actually occurred. Their verdict solemnly declares to the Court and to the world, that Owen Keveny was murdered, and we can not allow you to say, that he was not, and hear you argue upon the assertion. You know we can not, then why attempt it?

*Mr. Stuart.*—Then I shall proceed immediately to the motion in arrest of judgement, on solid, legal, grounds, upon which no question of right can possibly arise, assuring the Court at the same time that I did not consider the question relative to the American line as having been decided; or I certainly should not have raised it again. As to the proof of the death, I intended to argue upon it incidentally, a course which I thought the Court had permitted us to take, but I certainly shall, now I know its pleasure, confine myself to the legal grounds which support a motion in arrest of judgement. And I state, as the first feature of my argument upon it, that this Court has no power to try any offence committed in the Indian territory; and 2ndly, If it has, it does not possess power to try for any felony; or, in other words;

my broad position is, that this Court has no jurisdiction at all, or if any, it is confined to misdemeanors, and is incapable of trying any felony. Before I enter upon the question itself, I must look at the act upon which this indictment is founded, and when I so look at it, I find it to be "an act for extending the jurisdiction of the Courts of justice in the province of Lower Canada and Upper Canada to the trial and punishment of persons guilty of crimes and offences within certain parts of North America adjoining to the said provinces." My object in reading its title is to shew, from the very nature of the act, that its construction ought to be most rigorous and strict, seeing that it trenches upon one of the fundamental principles of the common law of England, viz. that of locality of jurisdiction and trial. This statute, it will at once be remarked, gives jurisdiction to try crimes and offences committed out of Lower Canada to the Courts of this province, thus giving jurisdiction where there is no locality, and not only does this act of a British parliament assume the right of so doing as far as England herself may be interested therein, but also for the whole of Europe as far as their subjects are concerned. Again look at the nature and state of the country; it is *Indian* territory, and it furnishes a strong additional reason for calling for the most strict and rigorous construction of such an act. Look at this country over which this act assumes a power and jurisdiction, and we find it a country with no government at all, (that is, no civilized government,) still in possession of the wild natives, the aborigines of the soil, who still consider themselves the lords of it, and it may be questioned whether the power of legislation over it actually exists as a right. The right of legislation over this country assumed by Eng-



land, I say, may well be doubted. How did she obtain it? There are only two ways, I contend, by which the right of legislation can be attained by any nation, viz. by occupancy, or by conquest; and by neither of these did England attain the right of legislation for the Indian territory. The fact of non-occupancy is matter of notoriety; I would ask then from whom did she conquer it? not from the French, for they never held an adverse possession of it, an adverse possession has never been held by England, for she never had any occupancy, no adverse possession was ever held by any foreign European nation, no adverse occupancy has been maintained by any nation but the United States. They have been at war with some of the Indian nations, and they have held, and do still hold, an adverse possession of some of their lands, but they are the only nation who have acquired Indian lands by a course which the law of nations acknowledges as conferring the right of legislation. It might have been supposed that the French had a possession or occupancy, because some of their traders visited certain parts of this wild country; but their traders never dared to assume an adverse occupancy. They had their trading posts; how? by sufferance. They explored the wilderness; how? under the protection of its native lords, but they never dared to think of an adverse possession. It might, in the same way, be supposed that England had maintained a possession of this country, because she continued the trade which had been carried on by the French, and increased it; but she had not therefore any possession of the country, or any portion of it gained from the natives by conquest, and retained by actual occupancy. What occupancy has England, or what occupancy had France ever in this country? none whatever, they visited it as traders;

and were permitted to traffic, and erect trading-posts, but the French and the British have no more real occupancy or possession thereby, than they have of Smyrna or Constantinople, because they have established factories there. The ground I take and the position I maintain is this, that the British have only a precarious possession of any part of this immense and unexplored wilderness, a possession similar to that enjoyed by the French traders, by permission from the aborigines, not acquired by conquest, and therefore incapable of being transferred or ceded, nor indeed was it ever attempted to be ceded to the British government; for the possession of the French was, at its utmost extent, a permission to erect trading-posts.

*Mr. Justice Bowen.*—Do you intend to say that it was not ceded to England at the treaty of Paris of 1763, or that the Court of France had no right to cede it? as according to your argument they could not legislate for it, having no occupancy in point of fact, and never having acquired the right of occupancy by conquest.

*Mr. Stuart.*—I do certainly; but I shall come to that point presently. I beg leave now to contend that this Court has no jurisdiction given to it by the statute of the 43d Geo. III. cap. 138. The title of the act I have just read, and its object is so well known that it is unnecessary to read the preamble and first enactment, wherein it is set forth at length. It recites that great crimes and offences, committed in the said Indian territories, have gone, and may hereafter go, unpunished, and greatly increase, for the remedy whereof, this act declares that all offences committed in the said Indian country, not cognizable by any jurisdiction whatever, shall be, and be deemed to be, offences of the same nature, and shall be tried in the same manner, and subject to the same punishment, as

if the same had been committed within the province of Lower or Upper Canada; the second clause of the act, authorises the Governor, Lieutenant Governor, or person administering the government for the time being, to empower persons to act as civil magistrates, and justices of the peace, in the Indian country, and makes it lawful for any body to apprehend, and take before any person commissioned as aforesaid, or to convey, or cause to be conveyed, any person guilty of a crime or offence, to the province of Lower Canada, and there to deliver him into safe custody, for the purpose of being dealt with according to law. The third clause demands very particular attention, as it provides for the trial of the persons so brought down. The moment we have read this clause it strikes me that it can no longer remain a question that this Court does not possess any jurisdiction over the Indian territory; the only act which extends the jurisdiction of the Courts here to take cognizance of offences committed there, is the one I hold in my hand, viz. 43d Geo. III. cap. 138, and this act does not give any power to this Court. I will read its own declaration of the Courts to which it delegates these new and extensive powers, sect. 3d. "And be it further enacted that every  
 "such offender," (that is, every such offender so sent,) "may and shall be prosecuted and tried in  
 "the Courts of the province of Lower Canada,  
 " (or if the Governor, or Lieutenant Governor,  
 " or person administering the government for the  
 " time being, shall, from any of the circumstances  
 " of the crime or offence, or the local situation of  
 " any of the witnesses for the prosecution or defence, think that justice may be more conveniently administered, in relation to such crime or  
 " offence, in the province of Upper Canada, and  
 " shall, by any instrument under the great seal of

"the province of Lower Canada, declare the same, then that every such offender may and shall be prosecuted and tried in the Court of the province of Upper Canada,) in which crimes and offences of the like nature are usually tried, and where the same would have been tried if such crime or offence had been committed within the limits of the province where the same shall be tried under this act." Here then we see that the jurisdiction of this province was extended by this act to the trial of persons committing offences in the Indian territories in the Courts where crimes and offences of the like nature are *usually* tried, and where the same would have been tried, if such crime or offence had been committed within the limits of the province. The natural, the obvious, and, in fact, the only, enquiry, which this delegation of increased jurisdiction, taken in connection with this case, suggests, is, which are "the Courts in which offences of the like nature are *usually* tried?" I answer, and contend that the answer is correct, they are the Courts of King's Bench; they are the Courts of King's Bench of the three districts, into which this province is divided, to wit, Quebec, Montreal, and Three Rivers, and that the increased jurisdiction is given only to them. I am perfectly aware that it may be asked, may not, and do not, Courts of Oyer and Terminer take cognizance of crimes and offences? at once I answer, they may do it, and they do take cognizance of them, but I ask, is a Court of Oyer and Terminer the Court wherein crimes and offences of this nature are *usually* tried in this province? because it is only to the Courts where crimes and offences of the like nature, when committed therein, are *usually* tried, that the jurisdiction to take cognizance of crimes and offences is extended. The answer, I think, must be, no,

they are not. Again, I might be permitted to remark, that the words of the act are the Courts where such offences are usually tried, and must therefore, *ex necessitate rei*, mean Courts already established, not to be established, and where shall we look for Courts which, at that time, usually tried crimes and offences? We must look to the Courts of King's Bench of the three districts; for it can not, I should think, be contended that a Court not in existence, not (if I might use the expression) born, not yet brought to life, could be that usual Court, wherein offences of a like nature, committed within the province, would have been tried. The Courts of King's Bench, being the ordinary and established Courts of the province, must have been the Courts contemplated by the statute, and most correctly designated by the framers thereof, "the Courts where offences are usually tried." A Court of Oyer and Terminer is a Court of a day, and can not be the Court intended; the Courts of King's Bench are perpetual, and must therefore be the usual Courts. There is another reason which completely excludes the idea of a Court of Oyer and Terminer being intended, but the point has been argued with so much force by my learned friend, Vanfelson, that I shall barely mention it, as a concluding objection, which I offer to the act under consideration being construed as extending the jurisdiction of the Lower province to the trial of any crime or offence committed in the Indian territory by a Court of Oyer and Terminer. The act in question, when speaking of Lower Canada, invariably says *the Courts*; the offenders are to be prosecuted and tried "in *the Courts* of Lower Canada, in which crimes or offences of a like nature are usually tried, and where they would have been tried, &c. &c." what are these Courts? they

must be, I again say, those of the King's Bench; for we know no other *Courts* wherein crimes and offences are *usually* tried. Again, "and it shall also be lawful for the *judges and other officers* of the said *Courts* to issue subpœnas, &c." what *Courts* but those of the King's Bench in this province meet this description? What *Courts* have *judges and other officers*, their sheriff, their prothonotaries, &c.? not *Courts* of Oyer and Terminer assuredly, but the *Courts* of King's Bench. provided for by the judicature act, which not only establishes *Courts*, but to the several *Courts* gives what is necessary to the permanent administration of justice, judges and other officers. As upon this part of the subject I may have to enter more fully, in examining, if it should be thought a *Court* of Oyer and Terminer has *any* jurisdiction over offences committed in the Indian territories, how far it extends, I leave it for the present, and, as I may not have succeeded in satisfying the *Court* that it has *no* jurisdiction over the Indian territory for the trial of any offences committed therein, I shall now submit some observations, in support of another branch of my argument, namely, that, if it should be found to possess jurisdiction at all, it is only a limited one, viz. over misdemeanors, under the term "crimes and offences," and does not extend so as to enable it to take cognizance of any felony. I advert to the case of *Shaw*, produced at large by my learned friend who is with me, and with confidence submit it as conclusive on every point that bears upon this division of our argument. It first, I think, establishes that, although the term "crimes and offences" might in general be supposed to include felonies, yet that, under the circumstances of extra-jurisdiction conferred by this act, in opposition, or contrary, to the common law, a construction the most limited

must be necessarily given to the terms, and under such a construction, the delegated power extends to no higher crime or offence than misdemeanor. The reason why this construction is given to statutes conferring an extra-jurisdiction is, that as no power to legislate over this territory or country exists in the colony or province to whose Courts authority to try crimes and offences is given, it is necessary that every thing affecting the life of an individual should be considered in the Courts at home, under the eye of the parent government; whither points, such as those arising in the present case, may be speedily referred, and a final decision given thereon, from an accurate knowledge of the whole circumstances having been obtained by the investigation having passed, as it were, immediately under the personal observation of those who have ultimately to decide. I contend that Shaw's case distinctly establishes that by the term "crimes and offences" it is only intended to give the power to try for misdemeanors, for it is proved by the proceedings in that case being quashed, that an indictment, even in the Courts at home, for a felony, founded upon an act giving extra-jurisdiction over "crimes and offences" could not be supported, and if it could not at home, I suppose it will not be contended that it can here. It is then, I consider, evident, (however I might be disposed to admit that, under a general construction, the power of the Court might, under the term "crimes or offences," in its own district, take cognizance of felonies, though felonies do not, in law, come under the denomination of either the one or the other,) that felonies can not be considered, under this act of the 43d of the King, as comprehended under the description of "crimes or offences," because the extra-judicial authority conferred, demands imperatively that the strictest inter-

pretation be given to it, and in the strict legal construction of the words, "crimes or offences," felonies are not comprehended. I contend thus, upon all the general principles of law, which are alike familiar to the Court, as they are well established; and I consider it needless to trouble the Court farther upon this head, after so late a decision on the point as the case of Shaw, upon which we rely. The Court will find that it goes all the extent for which we have contended, and particularly establishes the principle that the statutes of this description, and the 42d Geo. III. cap. 85, on which Shaw was indicted, was one where they make use of the terms "crimes or offences," do not therein embrace felonies. I contend farther, that it was the duty of the King's law-officers to allege in the indictment, that De Reinhard was a King's subject. This also is a specialty arising from the nature of the jurisdiction, for I am free to admit, that, in general cases, such as those which occur in Quebec in Lower Canada, or London in England, or any place known to be in the King's dominions, it is not necessary for the indictment to do more than allege that the offence was committed against the peace of our Lord the King, his crown and dignity, because every person found in his dominions owes him a temporary allegiance, and it matters not to the law what the individual is who commits an infraction upon it, whether he is a foreigner or a native subject, for, whilst receiving the protection of a government in its territory, he owes obedience to its laws. Widely different, as I conceive, is our case. We were not, (admitting for a moment the entire representation of the Crown to be correct,) receiving any protection from the British government, therefore could owe it no allegiance; in this wild country, destitute of the form of a civilized government, I would ask what even, by



possibility, we could have violated? How can it be said that we have violated the laws of our Sovereign Lord the King, when not the shadow of his law could be found there, and, *non constat*, that the very time and place, where this offence is alleged to have been committed, we were not in the acknowledged territory of some foreign power, of the United States, for instance. I contend that under this act, so various in its provisions, and as extraordinary as various, absolute certainty was indispensable, and that an essential feature is wanting in the indictment, by the omission of the Crown to aver that the prisoner was a subject. Admit, for the sake of argument, that the British legislature may pass a law to bind its own subjects in a foreign land, a point upon which, perhaps, much might be said, but admit that every nation has the power at all times to legislate for its own subjects; will it be pretended that she has the right to legislate for those of other powers. It may be said the prisoner was known some time ago to be in the British dominions, or that his occupation had made him owe allegiance. It did so, but it was a temporary allegiance only, which was paid and ended with quitting her service and territory. I contend this omission to charge the prisoner with being a subject, and that the offence was committed within the King's dominions, is as fatal an omission as if the words, "against the peace of our said Lord the King, his crown and dignity," had been left out. In supporting this position I submit to the Court that this offence, being charged as committed in the Indian territories, without alleging that it was in the King's dominions, *non constat*, but it was in that part of these Indian territories if committed wherein, the act itself acknowledges, as well as the indictment, that unless a subject, he could not be tried. The indictment sets forth that "Charles De-

" Reinhardt, late of a certain place in the river Win-  
 " nipeg, not known by any name, and not compris-  
 " ed in any parish or county, but situated in the  
 " Indian territories, or parts of America not within  
 " the limits of either of the provinces of Upper or  
 " Lower Canada, or of any civil government of the  
 " United States of America, &c." and the act de-  
 clares, in extending the jurisdiction, that it is to  
 the prosecution and trial of persons committing  
 offences in the Indian territories, or parts of Ame-  
 rica not within these provinces, nor within the li-  
 mits of any civil government of the United States  
 of America; looking then at the indictment it ap-  
 pears to me as if it was drawn up expressly to  
 shew that the offence was committed in a place  
 where no jurisdiction could be exercised by the  
 British government. The offence is not charged  
 to have been committed in the King's dominions,  
 nor is the prisoner charged to be a subject of the  
 King, two substantial averments to make in every  
 indictment, but especially in a case founded upon  
 a statute giving a jurisdiction at open war with the  
 very first principle of our common law, that local-  
 ity alone gives the right of jurisdiction. The ge-  
 neral rule upon every indictment is, that it ought  
 to be certain to every intent, without any intend-  
 ment to the contrary, having the same certainty  
 as a declaration, for all the rules that apply to ci-  
 vil pleadings are applicable to criminal accusations.  
 Can it be said that this indictment is certain? must  
 it inevitably follow that this " certain place with-  
 " out a name, in the river Winnipeg, not compris-  
 " ed in any parish or county, but situated in the In-  
 " dian territory," is not within the limits of some o-  
 ther government, to whom the prisoner must have  
 owed a temporary allegiance. The strictness with  
 which indictments are construed, and the rigidity  
 with which all their forms are insisted upon by

judges, even in ordinary cases, where every thing being perfectly known to all the parties, it can be only for form's sake, are well known, and it is needless to advert to the circumstance that the omission of a word, of a syllable, nay almost of a letter, will quash an indictment; but here, in a case so completely *sta generis*, involved in doubt and uncertainty as to jurisdiction, in a case founded upon a statute which I repeat, in giving jurisdiction to these provinces, trenches upon the very foundations and fundamental principles of the common law of England, namely, the association of locality and jurisdiction; the Crown officers, in their indictment, throw aside every rule which has heretofore guided our practice, or, when neglected, taught us, by the consequences, the necessity of being guided by them, and content themselves with simply averring that this nameless place is within the jurisdiction of this Court. In Shaw's case the venue is laid in a parish at London or Middlesex.

*Mr. Justice Bowen.*—Then you contend, I suppose, that the indictment should have stated that he, the said Charles De Reinhard, being a subject of his Majesty, and late of a certain place in the river Winnipeg, not known by any name, and not comprised in any parish or county, but situated in the Indian territories, or parts of America, not within the limits of either of the provinces of Upper or Lower Canada, or of any civil government of the United States of America, but within his Majesty's dominions, and the jurisdiction of this Court, *scilicet*, in the parish of Quebec, in the county of Quebec, in the district of Quebec, three negatives which would have made the indictment void.

*Mr. Stuart.*—No, your honour, I only contend, that it should have charged, in addition to the words contained in the indictment, that the place

was in the King's dominions. It might have said at Red River, or any other place.

*Mr. Justice Bowen.*—You argue that the omission of the *scilicet* is fatal, that it ought to have been laid as committed at a place which is extra-parochial, situated in the Indian territories, within his Majesty's dominions, to wit, at Red River.

*Mr. Stuart.*—Yes, I do. The Crown officers have very wisely laid it as being *contra pacem domini regis*.

*Solicitor General.*—I beg to mention to the Court that the omission of the *scilicet* is not the result of any oversight on our part, but that, when preparing the indictment, it was considered by us to be mere surplusage, and therefore rejected as unnecessary. We charge it to be against the peace of our Lord the King, his crown and dignity, as sufficient.

*Mr. Stuart.*—That is the point upon which we are at issue, you say the offence was *contra pacem domini regis coronam et dignitatem ejus*, and we say he had no *pax* at all to keep there, and this answer I make to shew that the averment, that it was in the King's dominions, was absolutely necessary. Had they done that, they would, the moment it was established, have shut out all argument on the question of his being a subject; because, if he was in the King's dominions, he owed the King a temporary allegiance, but, as we say he is not a subject, he owes no natural allegiance, and from accidental circumstances alone can it be required from him, and therefore the obligation should be averred and proved. However much I might be disposed to doubt the right of England, or any other nation, to legislate for even her own subjects in foreign states, yet it can not, I imagine, be contended, if she does possess that right in reference to those who owe her a natural allegiance, that she

can extend it to all who, from circumstances, owed her a temporary allegiance only. That being the case, I say, upon the Crown's own shewing, it is not evident that temporary allegiance was due from the prisoner, over whom the King possesses no natural authority, he being a foreigner, and on its own shewing, there is no proof that, instead of this offence having been committed *contra pacem domini regis*, it was not committed *contra pacem United States*. The argument which I purpose to adduce to the Court, branches itself into two distinct propositions, upon each of which I shall briefly remark, and I hope satisfy the Court that these omissions are fatal to the indictment. I contend first then, may it please the Court, as a broad and marked position, that the British legislature possess no right to legislate for a country still in the possession of the Indians, and secondly, that, admitting even that they have the power of legislating for their own subjects any where, it is only for *them* in a foreign country that they can do so; upon both these points I argue that the indictment is radically defective.

*Mr. Justice Bowen.*—Have you considered what will be the effect of the fourth clause, which makes some provision upon that subject. It enacts that if any “offence charged and prosecuted under “this act shall be proved to have been committed “by any person or persons not being subject or “subjects,” and so on. When must this be proved? necessarily it must be upon the trial, because, upon such proof being exhibited, the Court is directed forthwith to “acquit such person or persons not being such subject or subjects as aforesaid, of such charge.” Who then is to prove this? assuredly, the prisoner, not only because he is the most interested in proving it, but because he is the best able to do so. The Crown have no

means of knowing his birth, parentage, and education, and ought not to be called upon to prove it. He himself knew his birth-place, and all the circumstances necessary to secure his acquittal, if improperly indicted, and he should have proved them so as to have entitled him to have his discharge. It was his duty, not that of the Crown.

*Mr. Stuart.*—Your honour's observation completely confirms my argument, that the omission of the averment is fatal to the indictment. From the manner in which this indictment is drawn up, we should not have been allowed to deny our being a subject, and to go into evidence to substantiate such denial. It would not have been competent to us to do so, because it was not in issue between us and the Crown. This answer was not put in upon the trial, because we should not have been allowed to go into evidence upon it, inasmuch as the question under trial was, guilty or not guilty, not, subject or no subject. We could not, under the general plea of not guilty, a plea which, from the manner that the indictment was drawn up in, constituted the only one we could make. I say, we could not, under that plea, go into evidence of De Reinhard not being a subject, though the moment we established that fact, he would, under the act, have been entitled to his acquittal, because it was not averred upon the indictment that he was so, and consequently formed no part of the issue in contest between the Crown and the prisoner. The suggestion of his honour, Mr. Justice Bowen, abundantly strengthens the argument which I have had the honour to submit in support of the position that the indictment is defective, from its not averring that we were a subject, because had it been done, we should have negatived the averment, and have been entitled to an acquittal —

*Chief Justice Sewall*.—Not exactly so, Mr. Stuart: according to my idea, there is another difficulty which you would have to surmount: when you had shewn incontrovertibly that De Reinhard was not a subject, that would only be half the point which it would be necessary for you to establish, so as to entitle the prisoner to his acquittal, under the clause to which my brother Bowen has so correctly, (and advantageously too,) drawn your attention. I will read you (for it is very short) the whole clause, so that you may clearly comprehend it, *verbatim et literatim*: “4th. Provided always, and be it further enacted, that if any crime or offence charged and prosecuted under this act shall be proved to have been committed by any person or persons not being a subject or subjects of his Majesty, and also within the limits of any colony, settlement, or territory, belonging to any European states, the Court before which such prosecution shall be had, shall forthwith acquit such person or persons, not being such subject or subjects as aforesaid, of such charge.” You will observe that this clause does not put it into the power of the Court to acquit him forthwith, even if it should be allowed that he proved himself to be a foreigner, he must, beyond making it appear that he is not a subject, go on, and also shew the offence to have been committed “within the limits of any colony, settlement, or territory, belonging to any European states,” before it is in the power of the Court before whom the trial was holding, to say that the prisoner must be forthwith acquitted of such charge. The provision may have been dictated by some such suggestion as this; relative to being a natural-born subject, it can be known only to the prisoner with certainty, the Crown has no opportunity of being acquainted therewith. The Crown might say

thus, "you know, but I do not know, whether you are a natural-born subject, or whether the offence was committed, but you, the prisoner, if you are not a natural-born subject, which we can not know, or if you shew, we can not rebut, as we can not prove a negative, must go farther, and to be entitled to demand your acquittal, must prove that it was within the limits of any colony, settlement, or territory, belonging to any European states, as well as that you are not such subject as this act gives the power to try for any crime or offence committed any where in the Indian territories." I have stated that which appears a difficulty which you have not adverted to, that we may hear you upon it, as you may perhaps obviate what at present strikes the Court as a considerable obstacle to his acquittal, though it were established that he, in reality, was not a subject.

*Mr. Stuart.*—I am certainly much indebted to your honour for so doing, but I would remark that we are not asking for the acquittal of the prisoner, or contending upon, or as to, what would have entitled him to it, but we are contending that, upon the face of this indictment, that which ought to have been averred is omitted, and that such omission, is a fatal omission, and ought to arrest the judgment of the Court, and in thanking your honour for your observations, I do it because they most forcibly manifest that the prisoner has been deprived of the opportunity of shewing that which, when proved, must have secured his acquittal. The indictment does not aver that he was a subject, he could not, therefore be permitted to prove the contrary, because this answer would immediately have been given by my learned friends, "we do not aver him to be a subject." I say that they ought to have so averred him, because, if he was not a subject, they had no right to try



him. The moment that he was not a subject, the prosecution must stop, nor would the Court have a right, I take it, to try even a subject, if the offence was out of the King's dominions.

*Mr. Justice Bowen.*—Perhaps that is not quite so clear; and if you attentively read the 4th clause, I think you will find that his not being a subject is not sufficient forthwith to stop a trial, but, as was pointed out by the Chief Justice, he must go farther. By the 5th clause you will find the direct reverse of your last position to be law. It is in these last words, “provided nevertheless, that it shall and may be lawful for such Court to proceed in the trial of any other person being a subject or subjects of his Majesty, who shall be charged with the same or any other offence, notwithstanding such offence shall appear to have been committed within the limits of any colony, settlement, or territory, belonging to any European state as aforesaid.” Here you see that provision is especially made for the trial of any subject, notwithstanding his offence shall appear to have been committed within the limits of any colony, settlement, or territory, belonging to any European state.

*Mr. Stuart.*—The principle I advert to as completely sustaining the argument I have submitted, is the great principle of public law, that no nation can legislate for the subjects of another, unless whilst they are receiving, in the territory of that nation, the protection of its laws; and that allegiance and protection are reciprocal obligations; thus I say that the British parliament could not, by this act of the 43d, legislate for a subject of the United States, in the Indian territory belonging to the United States. I do not know that it could even for its own natural born subjects, but that must be the utmost length to which it could

carry the principle of perpetual allegiance. Then I say, as the face of the indictment does not aver that the offence was committed in the King's dominions, that the prisoner is not bound by this act if he is a foreigner, (as he is,) and owes no natural allegiance, because the obligation of allegiance is inseparable from the benefit of protection. Where the latter is not received, the former is not owed, and ought not to be demanded. This is a proposition that is true in the most unlimited sense. The 5th clause of the act, I am aware, produces a limitation of this principle, but what I speak of is that it has no limitation by the acknowledged public principles of international law. It would be absurd to talk of the imperial parliament legislating for China; then what right has it to legislate for the territory of any other power. Now, if for an offence committed in China, the offender is ever tried in London, it can only be where that offender is a natural-born subject of the British Crown, and therefore incapable of ever divesting himself of the obligation of allegiance. My argument embraces two or three points, and, 1st. locality; it is absolutely necessary that the indictment should not only aver that the offence was *not* committed within the limits of the United States, but also, that it was committed within the King's dominions. I then go one step farther, and urge that it is equally necessary that it should have averred that De Reinhard was a subject of the King. I do not admit the right assumed by the legislature in this act of legislating for its own subjects in a foreign territory; I do not admit, nor do I deny the right.—It is not necessary that I should do so, it is sufficient for me to shew that it was necessary that this averment should have been made, and, as from the Crown's own shewing upon its indictment, it does not necessarily follow but that this offence

might have been committed out of the King's dominions, it should have been averred that it was committed by a subject of the King. Respecting the *Indian territory* in which it is charged the offence was committed, and which the Crown officers appear to consider a sufficient description, I observe that I do not concur with them in opinion, for several and, to my mind, weighty, reasons, and I first submit to the consideration of the Court that neither France nor England have, or ever had, any title, adverse to that of the Savages, to this territory; that they have not, nor had they ever, any possession *de jure*, or *de facto*, or any beyond the toleration given by the Indians, who are (as I shall presently have occasion more fully to shew) completely an independent nation. I remark that one of the persons included in this indictment is a Savage, and he stands indicted for an offence committed on his own soil, the soil of which he is one of the lords, as being one of the aborigines, in a Court of a country foreign to him, and to which he owes no allegiance, and of whom he knows nothing, but that he permitted them to trade in his territory. I would ask of my learned friends, if that individual was tried, convicted, and executed, whether it would not, according to principles of national law, be a just cause of war? I would ask, whether, upon all the acknowledged principles of national intercourse, which are usually known among civilized states, under the appellation of the law of nations, that would not be the case? and in their absence, I would ask, whether they, knowing no civilized rule for their government, would not be entitled to blood for blood? "You have taken the blood of our brother, and we will cause the blood of your brother to be shed to atone for it." That this territory is theirs is evident from the act itself which calls it *Indian*

territory. It is not called *British* territory; in no part of the act is it denominated British territory, for the most obvious of all reasons, because it never was, in point of fact, in our possession, it never was conquered by us, and therefore could not be called other than *Indian* territory, because, neither by conquest nor occupancy, had it ever become ours. Relative to a consideration which very naturally arises out of this part of the argument, I am aware that it may be said that nations are satisfied with very slight proofs of occupancy. The erection, for instance, of a flag-post at the time a real, or imaginary, discovery (and perhaps more frequently the latter) of any place, appears to be made. As a part of the international law of the kingdoms of Europe, it may be good and ought on them to be binding, because the obligations imposed by the law of nations bring with them benefits in which those civilized nations of the earth participate, but it is not necessary or imperative that the Indian tribes should agree to this convention, or that they should allow that the erection of a pole or staff should be a confiscation of their territory. No, their lands, like ours, are defended by war, and the only reason, perhaps, that we have not practically known this to be the case is, that we never attempted an occupancy. We have wished to trade with them, and have been permitted. Hundreds of miles from each other, we have been permitted to build and establish trading-posts, but does that give us any right to assume a lordship over the soil, or make us the owners of the territory? No, certainly not, we have no title to it whatever; if we have, let the learned Crown officers produce it, that we may know upon what it is founded. I am not so visionary as to say to, or to expect, the Crown officers to pro-

duce title-deeds, as if it was merely an estate, but I do expect them to shew me a government *de facto*, or at least a possession *de facto*, adverse to that of the Indians, but they can not do that, for the Indians have always had the possession *de facto*, and have always had a government *de facto*. Again, I remark, that they manifest in their intercourse with other powers that they are an independent people of themselves, and have not forfeited, by the chance of war, or by voluntary cession, any of those privileges which belong to independent nations. In their treaties what nation ever interfered and asserted a claim to the territory, which they consider as belonging exclusively to themselves? Do they not make peace, and do they not go to war, like any other independent nation? If they are not an independent nation, why do we call them our allies? Why were they, during the late war with the United States of America, universally treated as such? But why should I detain the Court upon this point, when it is so clear that they possess all the attributes of an independent nation, and consider themselves to be an independent people, acknowledging no jurisdiction over them? They are not in the situation which, in their own figurative and energetic language, was so feelingly and forcibly depicted when one of their sachems described their situation to be, "that the reeds which had been blown across the Atlantic ocean had become great trees, which scoured them." "They were reeds," said the aged chief, "when they were blown across the great waters, they were received and planted by us, we watered them, and they grew so that they became great trees in the forest, and we are scourged with the branches thereof."

*Chief Justice Sewell.*—That would imply a very strong, though perhaps not an equitable, jurisdic-

tion. Do you say that was the complaint of one of their chiefs?

*Mr. Stuart.*—It was the complaint of an Indian chief, but not of one belonging to that portion of the Indian territory. It was a complaint made in Quebec by one of the chiefs, displaying in the most forcible simile, that those who, when weak, they had received and nourished, had, when strong, become their oppressors. Above, they have no occasion yet to make such a complaint, and I mentioned the circumstance to shew the different situation in which the Indian nations above were to those with whom we are more acquainted. How long it may be before they make the same lamentation we can not say. Whether those traders, who are now small as the reeds of which the sachem complained, who are permitted to erect posts for their convenience, but have as yet taken no actual possession of the soil, are to be nourished up into trees, and become the scourge of those who now protect them, remains in the bosom of time. But I conclude my argument by insisting that, as no actual possession has ever been held of this territory by the British nation, that as no adverse possession was ever taken of it by France, from which nation it might be supposed that England derived an authority to legislate for this territory, the British legislature could not, for a moment, entertain any right to make laws to bind any, but her own subjects, in the Indian territory; nor do I admit that they could even go that length, but, without admitting or denying their power over their own subjects, it could extend no farther. I therefore contend that it was most essential to aver that Charles De Reinhard was a British subject, and that the offence was committed, not only *contra pacem domini regis coronam et dignitatem ejus*, but also that it was committed within his dominions. That

*Indian* territories are not part of those dominions I consider to be satisfactorily established, not only by the Indians making peace and war as other independent nations do, but, I think, it will be evident that this independence has been, and is, recognized by Great Britain herself. If I only refer to the numerous treaties made with the Indians by the British nation, I completely establish my point. I need, indeed, only look to the very act upon which this indictment is founded, and I deduce the same favourable confirmation of my position. It is an act for the punishment of crimes and offences committed in the *Indian* territories. It is not even called the *British* territories, and must be intended to bring to punishment persons owing allegiance to Britain, either from the offence being committed in the British dominions, or from the offender owing a natural allegiance to the British Crown, and neither of these all-important characteristics are avowed in the indictment. We contend that both are necessary, and we consider that this circumstance, in conjunction with the other arguments we have had the honour to submit, furnish grounds which will induce the Court to accede to our motion in arrest of judgement.

*Attorney-General.*—In reply to my learned friends, I beg to contend that the case cited from East, of the King against the inhabitants of Oxford, I consider to be conclusive against the argument to shew that a new trial can be granted. The course to be pursued, if any of the evils which my learned friends have so feelingly described should occur, is there distinctly pointed out. “In capital cases if a conviction take place at the assizes upon insufficient evidence, the common course is to apply to the Crown for a pardon, upon a full report of the evidence sent in by the learned judge to the secretary of state for the home depart-

"ment." This is the mode by which any injustice may be obviated. I can not but remark, that I consider my learned friend rather unfortunate in referring to this case, as it appears to tell completely against, instead of supporting his argument. The reporter says, "I am not aware of any instance of a new trial granted in a capital case." The reason he was not aware of it is, that there had not been any granted, and he adds, what must be considered as pretty strong evidence that there had not, "that upon the debate of all the judges in Margaret Tinkler's case in 1781, it seemed to be considered that it could not be." If these are the sort of cases which my learned friends are reduced to the necessity of producing as authorities that a new trial may be granted in criminal cases of a capital nature, I apprehend your honours will not be disposed to be the first judges to evince that it can, by granting one in this case, in opposition to the positive dictum of my Lord Kenyon, that they can not be granted, when the utmost length to which the research of my learned friends enables them to adduce differing authorities is, that the point is not yet settled in England; but after a debate between the whole of the judges, it seemed to be considered that it could not be. This was in 1781. A great deal has been said by my learned friends, particularly by my friend, Mr. Stuart, upon the hardships that would occur in this and other cases of a similar nature from the Court not being able to grant new trials, but the hardship is merely imaginary, and disappears the moment it is examined. Every thing my learned friend conceives he would gain by a new trial, or rather the making a motion for a new trial, under a similar rule to that upon which motions in arrest of judgment are now heard and decided, viz: heard upon an undoubted rule of law, and decided by the discre-



tion of the Court to whom the motion is addressed, he can effect at present. Every thing that could be shewn upon a motion for a new trial addressed to the Court, can now be shewn in an application to the protecting and sure remedy against improper conduct on the part of the jury. Apply to the mercy of the Crown, but certainly not to the Court for a new trial, who, says the dictum of my Lord Kenyon, can not grant it. And if it could, what is the advantage? the Crown can at once remedy the evil, whereas a jury can not. On the subject of the confession of the prisoner, and of the actual death of Owen Keveny, my learned friends took nothing, nor could they, as they clearly were not topics that could be argued on a motion for a new trial, were your honours even disposed to be of opinion that you could entertain such a motion. I would, however, just remark, relative to the confession, that my learned friend's observations might have had some weight if the confession had not been in the prisoner's own hand-writing, but now they can not possibly have any, for the confession, being in his own hand-writing, is a complete and satisfactory answer to every thing that has been said relative to it, as he there acknowledges the murder, and details the circumstances which unfortunately led to, and attended, its perpetration. The next point urged by my learned friends was one of considerable delicacy, though unquestionably one of solid right, viz : the supposed misdirection of the Court relative to the boundaries, but as, in the former instance, they gained nothing by their objection, as they had, during the trial, urged it, and after all of us being heard at length upon the question, your honours solemnly decided it, and the jury, in appreciating the fact, adopting, as they were bound to do, your honours judgment on the legal points submitted and disputed in the ar-

gument, have, by their verdict, set completely at rest the question of locality, (at least as far as we can possibly have to do with it,) that verdict declaring the prisoner guilty in manner and form as he stood charged in the indictment. The indictment charged him with having aided, helped and abetted, one François Mainville, on the "eleventh day of September, in the fifty sixth year of our Sovereign Lord George III, with force and arms at a certain place in the river Winnipeg not comprised in any parish or county, but situated in the Indian territories, or parts of America not within the limits of either of the provinces of Upper or Lower Canada, or of any civil government of the United States of America, but within the jurisdiction of this Court." Here the questions of locality and jurisdiction are directly met by our charging the offence to have been committed at a certain place *without* the limits of the province, &c. but, nevertheless, within the jurisdiction of this Court. Upon this statement the point of law contained in the indictment was raised by my learned friends, and discussed, both in relation to the *locus in quo*, and to the jurisdiction of the Court. The one was finally determined by the verdict of the country, and the other by the judgment of the Court. The Court decided the southern and western boundaries of his Majesty's antient province of Quebec to constitute the southern and western limits of his new provinces of Upper and Lower Canada, and the jury, assisted by that decision, by their verdict, say, "we have proved the death to have taken place without the limits of the province, &c." Again, the indictment, in the counts upon which De Reinhard has been convicted, charges that he was aiding, helping, abetting, comforting, and maintaining, the said François Mainville to commit and perpetrate

a felony and murder, (at this certain place so as aforesaid described,) by making "an assault upon  
 "one Owen Keveny in the peace of God, and of  
 "our said Lord the King, then and there being,  
 "with a certain other gun of the value of five shillings charged and loaded with gunpowder and a  
 "leaden bullet, which last mentioned gun he the  
 "said François Mainville in both his hands, to, against, and upon, the said Owen Keveny, feloniously, wilfully, and of his malice aforethought, did shoot off and discharge, &c. giving unto him  
 "the said Owen Keveny one mortal wound of the depth of five inches, and of the breadth of one inch, of which last mentioned mortal wound he the said Owen Keveny then and there instantly died." And the counts conclude by saying—  
 "And so the jurors aforesaid, upon their oath aforesaid, do say that the said François Mainville, Charles De Reinhard, Archibald M'Lellan, Cuthbert Grant, Joseph Cadotte, and Jean Baptiste Desmarais, him the said Owen Keveny, then and there within the jurisdiction aforesaid, in manner and form last aforesaid, feloniously, wilfully, and of their malice aforethought, did kill and murder, against the peace of our said Lord the King, his crown, and dignity." If we had not proved the death of the man we should not have supported our indictment; the same observation will suffice as to identity, for it was Owen Keveny we charged as having instantly died of the mortal wound which was given to him, and the verdict of the jury says, that it was Owen Keveny who was feloniously assaulted by Mainville, and received from him one mortal wound of the depth of five inches, and of the breadth of one inch, of which last mentioned mortal wound he the said Owen Keveny then and there instantly died, and the prisoner Charles De Reinhard is found guilty, in man-

ner and form as charged, of having been present, aiding, &c. the said François Mainville to commit the said felony and murder. These points therefore were conclusively settled by those whose several functions gave them authority to settle them. There remains nothing then to consider but the question of jurisdiction, in relation to its extent, as conferred by the act. One objection of my learned friends, and particularly insisted on by my friend Stuart, was, that the rigorous construction which he contended the act conferring jurisdiction independent of locality, (thereby trenching, as he said, upon the fundamental principle of the common law, that locality alone gave power,) precluded felonies from being taken notice of under the general term "crimes and offences." "It appears not to be seriously questioned, (though doubts were said to exist on the subject,) that in a case of felony committed in the district or in the province, the Courts of the several districts of the province might, under the general description of "crimes or offences," take cognizance, but my friend Stuart, says, as the murder was committed in the Indian territory, it must go home for trial, because the right of trying for felonies committed in places over which an extra-judicial authority has been given belongs alone to the parent state. It was also urged by my learned friend who addressed you first, that the constitution of this Court was such as to prohibit cognizance being taken by it of felonies committed in the Indian territories, for, said the learned gentleman, "your honours are not judges, but commissioners, and the act of 1803 requires that *judges* shall belong to the Court taking cognizance of crimes and offences committed in the Indian territory," because, said my learned friends, "it is to judges that the power of issuing subpoenas is granted or given by

the act." Another objection of my learned friends, which may be associated with this part of their argument, is the difference in the words *Court* and *Courts*, as applied to the two provinces. It is, say the learned gentlemen, the *Courts* of the Lower province, whose power or jurisdiction is extended, and this is but a *Court*, and, as presidents or commissioners of this *Court*, your honours are not the *judges* of the *Courts* spoken of in the act, and they consider this as additionally supporting their position that a Court of Oyer and Terminer is not included in the act of 1803. It is constantly, they urge, the plural number in which the statute speaks of "*the Courts*" of the Lower province, and in the singular "*the Court*" of the Upper province. There is one other point of objection made by my learned friends, closely connected with this part of the question, which I will mention, because, I believe, I shall then have enumerated all that were advanced relative to the constitution of the Court, and the necessarily limited powers which such formation enabled it to exercise, and I propose to advert to the whole of them at once. The objection was, that the Court over which your honours are presiding, was not then established, and therefore could not be meant. On these objections, I say, first, that, in reference to the act meaning the Courts *then* established, there is nothing in the act itself which indicates that its operation was to be confined to the Courts *then* established, or to restrict its extension to any Court that might hereafter be established, provided it should be a Court in which a crime or offence of a similar nature to any sent from the Indian territory could be tried, if committed within the province. A Court of Oyer and Terminer and general gaol delivery was well known to the provinces of Canada, before

the passing of the act by the imperial parliament; and murder was a crime usually tried in them, if, when they were held, there were persons accused of that crime of whom the gaol required to be delivered. I should think the more rational construction of this clause of the act would be to consider it as meaning the various descriptions of Courts, in which offences of all the different degrees of enormity are severally tried, if committed within either of the provinces, and, admitting that interpretation, we all know a Court of Oyer and Terminer and general gaol delivery, is a Court wherein felonies and murders are tried, if there happen to be any felons and murderers of whom, at the session, the gaol requires to be delivered. All, I contend, meant by the act was, that an offence committed in the Indian territories should be prosecuted and tried in precisely the same way as if it had been committed within the body of one of our own districts, and a Court of Oyer and Terminer, being a competent Court to try a murder alleged to have been committed in the district of Quebec; a Court of Oyer and Terminer is, and must be, a competent Court to try the prisoner for a murder perpetrated in the Indian territories, under this act, which directs that the offence, whether the crime be a felony or a misdemeanor, "shall be, and be deemed to be, an offence of the same nature, and shall be prosecuted and tried in the same manner, as if the same had been committed within the limits of the province where the same shall be tried under this act." In fine my learned friends contend that no Court that was not actually *in esse* at the time of passing the act of 1803, is competent to try under it, whilst my position is, that these terms in the act, "usually tried, and where the same would have been tried," &c. have reference to the time at

which the offence requires to be tried, and, under this construction, any person now in the gaol of this district, upon a charge of murder will receive his trial before your honours at this Court of Oyer and Terminer and general gaol delivery, and I farther contend that a Court of Oyer and Terminer, being known to the constitution of both provinces of Canada, before the passing of the act of 1803, was sufficiently *in esse* to be admitted, (even under my learned friend's interpretation as to the necessity of its so being,) to a participation in the intended jurisdiction conferred by that statute. Having established that the objection against this very Court not being *in esse* in 1803 must fail, as well as shewn its power to try for felonies committed in the district of Quebec, it is necessary to follow up the enquiry, and prove that there is nothing that disqualifies it from exercising a similar jurisdiction over offences committed in the Indian territories to that with which the other Courts of the province are invested. My learned friend's objection is twofold, your honours are not *judges*, but commissioners, and it is the *Courts* of Lower Canada to whom power is given to try, &c. As to the distinction arising from the plural number being made use of by the act relative to Lower, and the singular when it speaks of Upper, Canada, I imagine a word will suffice. In the Upper province there is but one Court usually trying criminal matters, whilst in Lower Canada there are more. The objection received as to your honours is equally unavailing. Your honours are, for all the substantial purposes of the administration of criminal justice, at this moment judges, as fully as if sitting in bench or at bar. Having power to compel the attendance of witnesses, and to fulfill all the duties attached to the office, from the trial of a larceny, to the passing against a prisoner the

judgment of death. On another point suggested by my learned friends, as connected with the offence charged, I think their observations very peculiar. If, says my learned friend, it shall be found that a Court of Oyer and Terminer can take cognizance of offences committed in the Indian territory, still its power is, by the act of 1803, extended only to the trial of misdemeanors. This is not an objection to this particular Court, or to Courts of Oyer and Terminer generally, on the ground of inferiority of jurisdiction, but is an objection founded upon the wording of the act which gives jurisdiction to the Courts of justice of the province of Upper and Lower Canada for the trial and punishment of persons guilty "of crimes and offences" within certain parts of North America. These words, "crimes and offences," only give the power of trying for misdemeanors, and consequently, according to my learned friend's explication of the act, no Court in Canada can try, under this act, for a felony, because, as he argued with some degree of ingenuity, felony is no crime. A conclusion which, I confess, I can not see how my learned friend arrives at, and one certainly very dissimilar to those which Mr. Justice Blackstone, in his Commentaries, so clearly lays down, and so incontrovertibly establishes. I beg to refer the Court to Blackstone, 4th volume, cap. 1, pages 1 to 5, for an accurate definition of the nature of crimes. "A crime, or misdemesnor, is an act committed or omitted, in violation of a public law, either forbidding or commanding it. This general definition comprehends both crimes and misdemesnors, which, properly speaking, are mere synonymous terms, though, in common usage, the word *crimes* is made to denote such offences as are of a deeper and more atrocious dye, while smaller faults, and omissions of less consequence, are



" comprised under the gentler names of *misdemeanors* only." Here, I think, we have authority which would justify us in opposing a contrary opinion to our learned friends, and its saying a murder, being an offence of a deeper and more atrocious dye, is a crime; but we have no occasion to advance our own apprehension upon the subject, for Sir Wm. Blackstone expressly tells us, in the same page, when enlarging upon this general distinction; " treason, murder and robbery, are properly " ranked among crimes," and he gives, in very few words, the reason, " since, besides the injury " done to individuals, they strike at the very being " of society, which can not possibly subsist where " actions of this sort are suffered to escape with impunity." Having premised in the following paragraph, that " in all cases the crime includes an injury," that " every public offence is also a private " wrong, and somewhat more; it affects the individual, and it likewise affects the community;" he says, in applying this principle to the crime of murder, murder is an injury to the life of an individual, " but the law of society considers principally the " loss which the state sustains by being deprived " of a member, and the pernicious example thereby set for others to do the like." In relation to the act of the 42d, and the case of Shaw produced upon it by my learned friends, and so confidently relied on by them, I remark that, if that act is examined, it will be found to have been made for a very different purpose. It will be evident in a moment that the object of that act was to prevent, or punish, the commission of frauds, but very different are the objects of the 43d. Its preamble explicitly sets out by a declaration that, " whereas great crimes and offences have been " committed in the Indian territories and other " parts of America," &c. " and that great crimes

“and offences have gone, and may hereafter go, unpunished, and greatly increase,” to prevent which they pray his Majesty that it may be enacted, and by the statute it is enacted, that all offences committed in the Indian territory shall be deemed to be of the same nature, shall be tried in the same manner in the Courts of the provinces, and subject to the same punishment, as if they had been committed within the province where the trial is held. In Lower Canada, felony is a crime; crime includes murder; murder is tried in a Court of Oyer and Terminer, which has power to award the punishment, which is death. It appears to me, therefore, that, in every respect, the offence of the prisoner is included in the act, and may be tried by this Court as far as depends on its constitution and the right of jurisdiction; it remains only to consider the objections to the manner in which the indictment accuses him, and this, my learned friend says, is defective, because we have not averred him to be a subject. There is one remark that, upon the act of the 42d, I omitted, which I will submit before I enter upon the question of the indictment. The act of the 42d, as I have shewn, was for a very different purpose to that of the 43d, but I would ask of my learned friends, whether, or by what rule, it must necessarily follow, that, because, by one act, power is given to try for misdemeanors, it may not, by another, be extended to felonies? I would ask by what authority it is that the wisdom of the British legislature, is to be restricted to the mere power of conferring jurisdiction over misdemeanors to the Courts of the colonies; if they see fit? I now proceed to consider the objection raised to the indictment, and in reply to it, I contend, first, That it was unnecessary, secondly, That it would have been improper, to have averred that De Reinhard was a subject, or

that the offence was committed in the King's dominions. That it was not necessary to aver that he was a subject, I refer to the indictments under the act of 35th Henry VIII, to be found in Chitty, as precedents. These were indictments upon the statute which gives power to try foreign treasons in the King's Bench, or by a Court of Oyer and Terminer, in any county appointed by the commission. Hawkins, in setting forth this act, declares it to be for a remedy and declaration to clear up the doubts which before existed upon the questions, as to in what manner, and at what place, high treason done out of the realm was to be tried, and by the act 35th Henry VIII, cap. 2, treasons, &c. done out of the realm of England, "shall be from thenceforth enquired of, heard, and determined, before the King's justices of his bench for pleas to be holden before himself, by good and lawful men of the same shire, where the said bench shall sit and be kept, or else before such commissioners, and in such shire of the realm, as shall be assigned by the King's Majesty's commission, and by lawful men of the same shire, in like manner and form, to all intents and purposes, as if such treasons, misprisions of treasons, or concealments of treasons, had been done, perpetrated, and committed, within the shire where they shall be so enquired of, heard, and determined, as aforesaid." Here then is a statute providing for the trial of an offence, whose very essence is that the individual guilty of it was a subject, and owed allegiance, committed out of the realm, directing that it shall be tried by lawful men, in like manner and form, to all intents and purposes, as if it had been done, perpetrated, and committed, within the same shire where it shall be so enquired of. . Nothing can, I think, be more direct in point than this, but upon reference to

indictments upon this statute; for an offence committed out of the realm, and the guilt of which consisted entirely in the being a subject, we find it was not thought necessary to charge the accused with being a subject. I consider this as so conclusive, that I abstain from troubling the Court further on this objection to the indictment. In continuation, I submit, that the British government has a right to legislate for its own subjects any where; that, as they can not forego their allegiance, they are amenable to the laws of the country out of the realm, as much as if within it; but it will not be necessary to trespass on the time of your honours farther on this point; as this offence was actually committed in British territory, because we do not grant my learned friends, in the face of positive acts of parliament, of treaties, of boundary-lines run, and of every other act that can possibly demonstrate that this was considered by the British government as territory belonging to the Crown of Great-Britain, I say we can not grant that this was an erroneous consideration. With respect to not proving the prisoner to be a subject, it is true that the fourth clause of the act requires proof that a person is not a subject, and that the offence was committed within the limits of a colony, settlement, or territory, belonging to an European State, before a prisoner, indicted on this statute, shall be forthwith acquitted; but of whom is it required? Not of the Crown, certainly: If my learned friends enquire how so? why not? the answer is apparent. It is not required of the Crown, because it is a circumstance that can be better proved by the prisoner. It is a circumstance completely within his knowledge; and therefore must be proved by him. It is in the nature of alibi, the Crown indicts a prisoner for an offence, and, as well as the evidence in our hands will allow,

we bring home to a prisoner the charge laid against him, he asserts that he was not at the place at the time ; upon his defence he must prove this to entitle him to his acquittal, and in proving that he was not where the indictment charges him to have been he must shew where he was. So in this case, we charge him with being accessory to the murder of Owen Keveny; the Crown was not called upon to destroy its own case by averring that he was a British subject, because if it had averred it, the *onus probandi* would lie upon the Crown; it would have been bound to have proved that which it is at all times difficult to substantiate satisfactorily, viz: the birth-place of the accused. If the prisoner had made it a part of his defence that he was not a subject, he had at once the evidence in his own hands, he would have been put to no inconvenience on the subject of substantiating that which he alleged, but my learned friends appeared, till your honours reminded them of it, to have forgotten that it was necessary that a prisoner should go a step beyond the shewing that he was not a subject, before he would, under the statute, be entitled to his acquittal. By the fifth clause, the intention of the legislature is so clearly exhibited, that my learned friend's argument, though certainly very ingenious, must totally fail, for it is not left in any degree of uncertainty whether a British subject can be tried for crimes and offences committed in the territory of another state, for it expressly declares he may. It reads thus, " Provided nevertheless, that it shall and may be lawful for such Court to proceed in the trial of any other person, being a subject or subjects of his Majesty, who shall be charged with the same or any other offence, notwithstanding such offence shall appear to have been committed within the limits of any colony, settlement, or territory, belonging

"to any European state as aforesaid." Here we see, so far from it being any way dubious whether a British subject can be tried for offences committed in a foreign state, the act expressly provides that a subject of his Majesty shall have his trial proceeded in, notwithstanding such offence shall appear to have been committed within the limits of any colony, settlement, or territory, belonging to any European state. All my learned friend's argument, therefore, relative to the defect in omitting to charge the offence to have been committed in the King's dominions, vanishes in an instant. It was not necessary, because the act expressly authorizes the trial of any of his Majesty's subjects for offences committed out of the King's dominions, so as it is not within the limits of any civil government of the United States of America. To be entitled to his acquittal, it was not sufficient merely to prove one of the two points. His proving that he was not a subject would not be sufficient; his proving that the offence was not committed within the King's dominions would not be sufficient; but to come up to the statute, it must, before the Court can acquit any person charged and prosecuted under this act, be proved that the offence was committed, not only not within the King's dominions, but also within the limits of some colony, settlement, or territory, belonging to any European state; and beyond that, that the person so charged and prosecuted is not a subject of his Majesty. There was another observation of my learned friend, Stuart's, to which I can not but advert. He says the question between the Crown and the prisoner was not, subject or no subject, but, guilty or not guilty. It is true that was the question, but it was open to the prisoner to have proved, in any way that he could, that he was not guilty; and he would have done that,

had he proved, what the act renders it necessary to prove to entitle a prisoner to his acquittal, and which, so far from debarring the consideration of the question of subject or no subject, it would have formed a part of the question at issue, because he is charged with having committed this offence within the jurisdiction of this Court. To be within the jurisdiction he must be a subject of the King, or the offence must have been committed within the King's dominions. The points therefore of subject or no subject, and of King's dominions or not, were fairly included in this issue, and upon it the prisoner might have said, I am not guilty in manner and form as I stand charged in the indictment, for I am not a subject of his Majesty, and the offence was committed within a colony, settlement, or territory, belonging to another European state. Having proved this, we know the consequence; the Court would have been bound forthwith to acquit him. Another ground of objection by my learned friend, Stuart, and insisted upon by him at very considerable length was, that the British government had no title to this territory. My learned friend by saying that there was no title in possession of the government, explained that he did not mean they required a title-deed as an authority, but he said they had never acquired a right either by occupancy or conquest. My learned friend, with very great ingenuity, represented the Indians as having a government *de facto*, and a possession *de facto*, and would induce us to believe, that very great hardship and injustice would be done to this independent people, possessing, to use my learned friend's own strong language, all the attributes of a sovereign people, by its being determined that the Courts of the province of Canada, through an act of the imperial parliament, had had their jurisdiction ex-

tended to the cognizance of offences committed by its own subjects in the Indian territory, over and in which, as far as possession can demonstrate the right of governing, the British government justify their legislating by actual occupancy. That the nature of the occupancy held of this territory by the British, has always been considered sufficient to form a title to a civilized power to dispose of the soil, or to make laws for the government, of any uncivilized territory that it may discover, is evident from numerous instances that might be referred to; I will mention but one, namely, the grant to the Hudson's Bay Company. The principles upon which this right is sanctioned throughout the world are not to be questioned or controverted by any reference to the abstract question of benefit or injustice to the Indians, whom my learned friend so feelingly compassionates. They rest, for their justification, upon the broad and universal assent of every nation; in every age, that to extend the march of civilization furnishes the greatest victory, and the highest title to government, that nations can boast. This is the right that Great Britain possesses over this immense territory. Its being called Indian territory in the act is mere designation. Wherever the Indians appear, whenever they appear, they are always treated as British subjects, as in fact they are, for to whom do they look for protection but to their Great Father. I therefore contend, in opposition to my learned friends, that the indictment is not defective, that the offence is properly laid, when it is charged as being against the peace of our Lord the King, that the place is correctly and fully described without the *scilicet*, that it was unnecessary to allege that it was in the King's dominions, and that it would have been improper for us to have averred that the prisoner was a



subject, seeing that, in default of proof, the Crown would be destroying its own indictment. For these reasons, amongst others, which no doubt will be adduced by my learned friend, the Solicitor General, I consider that the motion for a new trial can not be entertained by the Court, whilst that in arrest of judgement will not avail the prisoner.

*Solicitor General.*—The motions which my learned friends have, with so much ability, submitted to the Court, are two—the first, for a new trial, and the second, in arrest of judgment. At an earlier stage of the argument I took the liberty of stating to your honours my belief that the motion for a new trial, in a case of capital felony, could not be entertained by the Court. I still feel considerable confidence in the correctness of the opinion, but it is certainly with the greatest deference that, as the basis of my observations, I assume it to be law, that the motion for a new trial in this case can not be entertained. Whatever confidence I before felt upon the subject can not but be increased when, at the present moment, I refer to the arguments of my learned friends, and find that all their ability and industry in research could not produce a single case to support the contrary opinion, for the utmost length that they discovered any authority to go, was to say that it was believed the matter was not finally settled, but that the general opinion, upon a debate of the whole of the judges, appeared to be that it could not be granted. Thus situated I feel persuaded your honours will not, in a case so completely novel, accede to the motion for a new trial. But we do not rely upon negative evidence in the opinion which we submit of the incompetency of our learned friend's proposition, because the case cited by my learned friend, the Attorney General, from 6th

Term Reports, containing the dictum of my Lord Kenyon, that in one class of offences, those greater than misdemeanors, no new trial can be granted at all, puts all the arguments of the counsel on the other side upon this part of the subject completely *hors du combat*. This decision of the enlightened and venerable judge, I take it, will not be set aside by your honours in the absence of any conflicting authority, for I advert again to the circumstance of my learned friends on the other side not producing a single case where a new trial had been granted, (nor has there been any, except that in *Lerinz*, which has since been overruled,) and that all the length they went was to adduce an instance wherein it is said that the matter does not appear to be fully determined in England whether it may not be granted. Under these circumstances, we can have no apprehension that there is any thing so peculiar in this case, as to induce your honours to sanction, with the weight of your decision, a contrary opinion to that of my Lord Kenyon. With respect to the popular part of the argument, so fully entered into by my friend Stuart, as to the hardship to prisoners of refusing a new trial in criminal cases, arising from the absence of a remedy against an improper verdict by a jury, as a writ of attaint will not lie against them, from the impossibility of pleading that a verdict was against, or without evidence, in arrest of judgment, from the peculiar anomaly that counsel are not heard on behalf of the prisoner in cases of felony, and that, as new trials are granted in civil cases, *a fortiori*, they ought to be in criminal; the plain answer is, if they were granted to prisoners, they must also be to the Crown, for it is just as possible that a jury may acquit against the weight of evidence, or upon improper testimony, as well as convict a prisoner. Indeed it appears to me that if my learned

friend's proposition was established as the ordinary practice of criminal Courts, the hardship would be greater to prisoners than at present, as the principles of humanity, which always influence the administration of our criminal law and the conduct of juries, inclines rather, I think, to the acquittal, than to the conviction of a prisoner, under the circumstance alluded to by my learned friend. Precisely the same answer will suffice as to counsel for a prisoner addressing the jury, the prisoner would gain nothing by that being the practice, because the Crown officers must then be permitted to do so, whilst as to no remedy existing, if a new trial can not be granted in a case of an improper verdict, inasmuch as it does not furnish a legal argument upon a motion in arrest of judgement, my learned friend, the Attorney General, has corrected that error by pointing to a sure remedy in the mercy of the Crown. Subject as every human institution is to error from the frailty of our natures, it would be presumption to imagine that improper verdicts may not sometimes be given, but it is the happiness of a defendant, who may be affected by such a verdict, that he has a sure protection against the consequences of such error in the mercy of the Crown, which never fails, upon a proper representation of the case, to extend its prerogative, and remedy the misconduct, or misapprehension, of a jury, by pardoning the prisoner. This is therefore the quarter to which my learned friends must direct their application, and if it is well founded, there can be no doubt of its success. The observations which I have addressed to the Court on the principle of competency in entertaining the motion, I would also remark, may serve, in a great measure, as answers to the expediency of granting the motion. There is, according to our idea, no necessity for doing so, to

enable the prisoner to escape the effects of the verdict of the jury, even if my learned friend's arguments as to the propriety which dictated it, were admitted to be correct, and that in justice and law he ought to escape them, for he has a more sure remedy open to him in the Royal mercy, and the power of the Crown is equal to its mercy and its justice. Upon this part of my learned friend's arguments, I therefore forbear troubling the Court farther. We consider first, with the greatest deference to your honours, that the authority of my Lord Kenyon is decisive in support of our opinion upon the incompetency to entertain the motion for a new trial, and we see nothing in the case made out by my learned friends that would sustain such a motion, were it competent to the Court to receive it. Whatever may be your honour's opinion on that point, I feel confident you will do me the honour to coincide with me, that the previous argument of my learned friends, even admitting every statement to be undeniably correct, can not be made to bear on their motion in arrest of judgment. My confidence of being supported by the Court in this, that only for matters on the record, can judgment be arrested, arises from the numerous authorities on the point. The first to which I refer is the most elementary book, indeed may be called the grammar of law. I mean Mr. Justice Blackstone. In vol. 4, page 375, (Christian's edition) he describes, in considering of "judgment and its consequences," what may be offered in arrest or stay of judgment by a defendant, upon a capital or inferior conviction. "He may," says the learned judge, "at the period of being asked if he has any thing to offer why judgment should not be awarded against him, as well as at his arraignment, offer any exceptions to the indictment, as, for want of sufficient certainty in setting

“ forth either the person, the time, the place, or the offence.” In another place, speaking upon this subject, he observes that, on no other ground than matter of law can it lie. Comyn’s Digest, vol. 5, word, *pleaders*, letter S. 47, considering of the avoiding of a verdict by arrest of judgment, says, “ after a verdict a man may allege any thing in the record in arrest of judgement, which may be assigned for error after judgement.” and the same learned judge in his Digest, as authority, refers to 1st Siderfin, 85, that a “ prisoner shall not tender any matter for stay of judgement, but what arises on the indictment.” Again, the same doctrine is expressly laid down, in the case of Bell and Steward, M. 23. Geo. II. in Wilson’s Reports, vol. 1. page 255. “ After a verdict the Court will suppose every thing to be right, unless the contrary appears on the record,” and this very opinion was given upon a motion in arrest of judgement, wherein, its not appearing upon the declaration, that the cause of action arose within the jurisdiction of the Court, and the possibility that the debt might be such a one as that Court had no jurisdiction of, were made the principal grounds upon which the motion was urged, and judgement was accordingly given for the plaintiff. In the case of Sutton versus Bishop, in 4th Burrows, page 2287, the same principle is laid down. In this case, which was one wherein a defendant had been improperly convicted, the Court held that, “ he was entitled to some relief, but in what mode he should receive it was not easy to determine.” The counsel for Bishop had contended that he ought, in some way, to have liberty to avail himself of the benefit of a particular provision of a statute, and amongst others suggested an arrest of judgement, Upon this the Court said, “ there was no pretence to

" arrest the judgements, because nothing appears  
 " on the face of the record to justify it, and the  
 " Court ought not to arrest judgements upon mat-  
 " ters not appearing upon the face of the record,  
 " but are to judge upon the record itself, that  
 " their successors may know the grounds of their  
 " judgement." I have before noticed that the case  
 in *Siderfin* goes so far as to say that the prisoner  
 shall not tender any matter for stay of judgement,  
 but what arises on the indictment. These author-  
 ities are some of them civil, and some criminal,  
 but they all arrive at the same conclusion, that no  
 points can be moved in arrest of judgement but  
 solid matters of law, which appear upon the re-  
 cord. The same opinions are set forth in various  
 cases in which the conduct of the jury, &c. is  
 considered as affecting the judgement, in 2d *Hale*  
 307. *Coke upon Littleton* 227, B. 1st Lord  
*Raymond*, 232. *Salkeld*, vol. 1. p. 77, and 317  
 of same vol. and the conclusion which my friend,  
*Mr. Chitty*, makes upon the whole is, I submit,  
 perfectly correct in law. " The causes on which  
 " this motion may be grounded, although name-  
 " rous, are confined to objections which arise on  
 " the face of the record itself, and which make  
 " the proceedings apparently erroneous, and there-  
 " fore, no defect in evidence, or improper conduct  
 " in the trial, can be urged in this stage of the  
 " proceedings." *Chitty*, 1st vol. p. 661. Upon  
 this part of my learned friend's argument, I shall  
 close my observations by remarking that, what-  
 ever weight in another place the circumstances  
 they adduce may have in obtaining mercy for the  
 unfortunate prisoner, they can not here have the  
 effect of obtaining a new trial, nor can be of any  
 consideration on a motion in arrest of judgement.  
 The Court, having admitted my learned friends  
 to make these remarks incidentally, I felt it my

duty to submit some observation in reply to them; having done so, I proceed to consider their arguments relative to the jurisdiction of the Court, both as it was questioned, under their objections to any Court having the power to try for a felony committed in the Indian territory; and also to a Court of Oyer and Terminer being invested with that power; the position of my learned friends I take to be, that no Court, and if any, that it is not a Court of Oyer and Terminer and general gaol delivery, that is invested with power, by the act of 1803, to try for a felony committed in the Indian territories. My learned friends refer to the preamble of the act and, the words "crimes and offences" being used, and also *Courts* in the plural number. They insist that it is only misdemeanors which the term "crimes and offences," made use of in the act, give the power of trying, and also that that power, under the designation of *Courts* is only given to the ordinary Courts of the several districts of the province.—But, if my learned friends had gone on to the fourth clause, they would have found that clause conclusive against their construction. as to the word *Courts*, (the species of offences intended by the act will be considered presently,) there they would have found that power is expressly given to the *Court* before whom such prosecution shall be had to acquit, under certain circumstances; the fourth clause is, "Provided always and be it further enacted, that if any crime or offence charged and prosecuted under this act shall be proved to have been committed by any person or persons, not being a subject or subjects of His Majesty, and also within the limits of any colony, settlement, or territory, belonging to any European state, the Court before which such prosecution shall be had, shall forthwith acquit such

“person or persons, not being such subject or subjects as aforesaid, of such charge.” Here then we see that power is not exclusively conferred to the *Courts*, according to my learned friends construction of the term, but the power of acquittal is expressly given to the *Court* before whom such prosecution may be had, which clearly shews that a *Court* may try crimes and offences committed in the Indian territories. The reason of the word being used in the plural in relation to Lower, and in the singular number, in relation to Upper, Canada, was very suitably explained by the Attorney General to arise from the difference in the judicial establishment in the two provinces. Then as to the term *usually*; “in which such crimes and offences are *usually* tried,” I contend that, by this expression, all legal Courts must be meant, and, according to this construction, that we can not measure the degree of use, or frequency of usage, of such Court, but that every Court legally having the power to try the particular crime or offence, if committed in either of the provinces; was meant by the legislature, as a Court where crimes and offences of the same nature are *usually* tried, and consequently had jurisdiction given to it to try offences committed in the Indian territory. A Court of Oyer and Terminer is such a Court in the province of Lower Canada, and therefore this is a Court where crimes and offences of the like nature as that of which the prisoner has been convicted are usually tried, and therefore competent to try such a crime or offence, though committed in the Indian territory. In reference to my friend Stuart’s observation that this act must be most strictly and rigorously construed, I have to remark that I differ completely with him. On what it is that he founds his opinion, I do not know. He assigned as one reason, that it trenched upon, what



he termed, a fundamental principle of the common law of England, which invariably associates locality and jurisdiction. The enquiry which suggests itself to me as proper to make previous to deciding upon its construction is this; is the statute of 43d. Geo. III; a remedial or a penal statute? If it was a penal statute, I should agree with my learned friend that it ought to receive a most strict and rigorous construction; but it is a remedial act in its fullest extent, and as such; I contend, in opposition to my learned friend, that it ought to receive the most extensive and liberal interpretation; because such acts are invariably construed in the most liberal manner, and such is the construction that I think I feel warranted in believing this act will receive from your honours, and if it receive the extensive construction I contend for, it will include all Courts, and must take in a Court of Oyer and Terminer. Again, in deciding upon the construction which any act of parliament ought to receive, I should think it highly expedient to endeavour to ascertain what were the objects the legislature had in view in passing it. What was the intention of the legislature in passing this act is manifest from its preamble, which states that, "whereas great crimes and offences have been committed in the Indian territory, &c. which are not cognizable by any jurisdiction whatever, and by reason thereof great crimes and offences have gone, and may hereafter go, unpunished and greatly increase." This was the evil which this act was intended to remedy, and as great crimes and offences had gone unpunished, and apprehensions were entertained that they might still do so, and greatly increase, there was a necessity for speedy punishment of crime in the Indian territory, that retributive justice might overtake the daring offenders who had long fearlessly committed all

manner of crimes and offences of the most atrocious nature. Your honours know there are cases in which it is essential that retribution should almost instantly take place. I ought rather to say, in which the necessity of speedy justice is such, that to delay it would be almost to render it unavailing as an example. We know that cases of murder and treason require—not retribution—it was an improper term that escaped me, because it is not for vengeance that justice administers the severest of punishments upon crimes, but for the public good, thus the making an example of one guilty fellow-creature, often deters numbers from falling into a similar delusion, and it is really an act of mercy to the community at large. The situation of this unfortunate Indian country equally demanded speedy justice, and the intention of the legislature was to bring to immediate punishment offenders who, for want of any jurisdiction to take cognizance of their great crimes and offences, had gone hitherto, and it was much feared might hereafter go, unpunished. How could this salutary measure be best effected? In what way could this object of the parliament be best accomplished, but by giving power to all the Courts to take cognizance of similar offences committed in the Indian territory to those which are usually tried therein when committed within their respective provinces? This was done, and in extending the jurisdiction to the Courts where offences of a like nature would have been tried, if committed in the province, it included a Court of Oyer and Terminer. That it should have done otherwise can not, for a moment, be imagined, I think, if we look at the constitution of the other criminal Courts here. The Court of King's Bench holds two short terms annually, or in case of the Chief Justice being sick, or, as was

the case some time ago, absent from the province, or, from any circumstance the Court was not full, or, as lately at Montreal, the Court was incomplete, or would not sit, there could be no way of administering speedy justice to crime, or to the individual accused, (perhaps wrongfully,) but by a Court of Oyer and Terminer, or rather than that, do my learned friends contend they should not be tried at all. Supposing some of the individuals accused arrived at Montreal, according to the course prescribed by the statute, immediately after the session had closed, are they to wait five months for their trial; without there being any possibility of having justice earlier rendered between the Crown and the prisoners? This surely could not be the intention of the legislature by the general expression that offences committed in the Indian territories are to be tried in the Courts where similar offences, if committed within the respective provinces, are usually, and would severally be tried. In Lower Canada as well as Upper, a Court of Oyer and Terminer is one of the *usual* Courts for the trial of murder and felonies generally, and is therefore a competent Court to try under this act the same offences, when sent down for trial to these provinces from the Indian territories. That this is a fair construction of the act in question, I feel satisfied, if not to the very letter, certainly according to the intent, which is the rule of law. There is another point my learned friends have dwelt on considerably, and upon which they appear to me to place a reliance but little warranted by any argument which they adduce to support the correctness of their position. It is that *Courts* being used in the plural number, in relation to Lower Canada, it must have reference to the three Courts attached to the districts of the province. I contend, in opposition to that

construction given to the words "Courts where offences are usually tried," that it means, or has reference to, the different kinds of Courts or trials that may be had, as the Court of King's Bench, a Court of Oyer and Terminer, or a trial at bar, and then the difference in phraseology as to the two provinces is accounted for, as in Upper Canada they do not hold trials at bar; there trials take place only in the Court of King's Bench.

*Mr. Stuart.*—I believe my learned friend, the Solicitor General, is misinformed on that point. He would not, I am confident, state that in Upper Canada trials at bar were not held, did he not believe it to be the case, but on farther investigation he will be satisfied the fact is that trials at bar do take place in the Upper province.

*Solicitor General.*—I may, perhaps, have gone too far in saying they were not held in Upper Canada, they may be perhaps; but when they are, such Courts form an exception to the general rule, and such Court is not the usual Court, for the usual Court in the sister-province is the Court of King's Bench. In reference to what I consider as a minor objection of my learned friends, (though insisted upon at considerable length by both of them,) namely, that the jurisdiction of the Court does not extend to felonies, though it might be admitted to try for misdemeanors committed in the Indian Territories, and the principle of law assumed and argued upon by my learned friend Stuart, that felony is not a crime; I remark that my learned friend appears to consider Mr. Justice Blackstone's making use, in his elementary work, of the terms crimes and misdemeanors as synonymous terms, as settling, conclusively, that felony is not crime; but, if the learned gentleman had gone on a very little farther, in the 4th vol. of that

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able work, which I repeat is the grammar of law, he would find that his own authority is directly in opposition to the argument which he has submitted. "The general definition of crime," he says, "comprehends both crimes and misdemeanors which, properly speaking, are mere synonymous terms, though in common usage," (in what common usage? why, in common usage among lawyers, among that class of persons for whom his work was more particularly intended,) "the word 'crimes' is made to denote such offences as are of 'a deeper and more atrocious dye,' and a little lower down, in the very same page, he settles the matter most conclusively as to what kind of offences ought to be ranked among crimes; "but," he says, "treason, murder and robbery are properly 'ranked among crimes.'" This is a part of Mr. Justice Blackstone's opinion which did not appear to attract my learned friend's attention; nor does the recent case of Shaw, produced by my learned friends, at all vary or oppose this doctrine. Mr. Selwyn, in opening the case on behalf of the prisoner, abandons all idea of questioning the general power of the Court, under the term "crimes and offences," to try for felony, and the decision of my Lord Ellenborough was not at all influenced by a consideration of the right of trying felonies under that general definition, but in arriving at his own decision, the point upon which his judgement was formed was, that this particular statute, for the prevention of frauds, did authorize it, and that, therefore, the proceedings must be quashed. In forming his judgement he adopted, and, as I humbly conceive, he sanctioned, the correctness of the position, which I have had the honour already to submit as a sacred legal rule, "that every statute ought to be construed according to the

“intent of parliament,” as well as another very similar, “that every statute ought to be expounded, not according to the letter, but according to the intent.” Adopt this rule, and what was the intent of the act of 1803? not to prevent frauds, or to punish mere wrongs of property, not to bring to justice individuals who had been guilty of slight misdemeanors; no, the preamble of the act recites, in a manner too plain to be misunderstood, or to allow it for a moment to be supposed that it was made to repress and punish slight offences, that, whereas great crimes and offences have been committed in the Indian territories, and by reason of their not being cognizable by any jurisdiction whatever, these great crimes and offences have gone, and may hereafter go, unpunished. To remedy this great evil, the act of the 43d Geo. III. was passed. What these great crimes and offences were, unfortunately, was matter of public notoriety, in the dreadful state of this devoted and unhappy country. It was not misdemeanors that constituted the great crimes and offences, but robberies, arsons, murders, and every other atrocious offence that adds to the dark catalogue of felonies. And to suppose that by this act the smaller offences were intended only to be prosecuted, tried and punished, would be to suppose that it was proposed to hold out encouragement to the perpetration of the larger ones. But it is contrary to common sense thus to interpret the act of the legislature. They gave the power to try for crimes and offences, for great crimes and offences, and the conclusion I arrive at on this part of the subject is, that felonies are crimes; and adopting the rules for construing acts that I have just quoted from Comyns’ Digest, vol. 5. word *Parliament*. Letter R. 10. one remark

more occurs on the point of the proper mode of expounding statutes. Comyns, same word and number, says, "if the enacting words can take "in the mischief, they shall be extended for that "purpose though the preamble does not warrant "it." *Bassett versus Bassett*, M. 1744, 3 Atkins, 203. Here the preamble does warrant it, it is crimes and offences that have been committed; the title warrants it, it is an act to extend the jurisdiction to the trial of crimes and offences; the enacting sections warrant it, the second speaks of crimes and offences, and of persons guilty of *any* crime or offence, the third speaks of every *such* offender, evidently referring to the former description of persons guilty of *any* crime or offence.—There can be no doubt that this act, being a highly remedial one, must be construed to include all crimes and offences. I say that, a necessity existing for the punishment of murder committed in the Indian territories, the parliament, by this act, gave under the term "crimes and offences," power to the Courts of the two provinces, (and amongst them to this Court) to prosecute, try, and subject to punishment, all persons accused and convicted of murder, or any other felony. Relative to the omission of proof as to the baptismal name of Keveny, of his actual death, and of the admission of the confession in a manner which my learned friends consider irregular, I consider that I should be most unwarrantably trifling with the time of the Court were I, after the solemn decision the whole of those points have received, to offer any thing in the shape of reply to my learned friends. The Court solemnly decided the admissibility of the confession, and it would be indecorous in me, had your honours decision been contrary to that which admitted the confession to go to the jury;

as it is, it is completely unnecessary. As to the death and baptismal name of Keveny, I should be most terribly infringing upon the province of the jury, were I to presume to stir their decision; each of these points have been decided by the Court, or by the jury, according as they appertained to the one or the other. I decline, therefore, offering any argument upon either of the points, and shall proceed to a consideration of whether it was necessary to have stated on the indictment that the prisoner was a subject. This is clearly a question of law, and therefore as clearly a proper point to be insisted upon in arrest of judgement, but my learned friends appear to overlook that the *onus probandi*, by the fourth and fifth clauses of the act, is completely thrown upon the prisoner. It is he who must prove that he is not a subject of his Majesty. After we have proved our allegation that the offence was committed in the Indian territory we have gone far enough, our case is proved, and it is the prisoner who must produce negative testimony, or evidence that he was not a subject of his Majesty, and that the offence was committed within some European colony or settlement. All that was necessary in the indictment was to have averred that the offence was committed within the jurisdiction of this Court, in the Indian territory, *sed majore certitudine*, we have described it as being perpetrated at the said place in the river Winnipeg; the jury have said that the offence was perpetrated there, and it is not competent to the prisoner, after his conviction, to turn round upon us and say, you have not averred that I am a subject. Admitting what my learned friends advance to be the fact, viz. that De Reinhard is not a subject, still that alone would not entitle him to his acquittal. It is very true that the act does say to



ensure to a prisoner an acquittal forthwith, that it must be proved that he is not a subject of his Majesty, but it does not say that, if he stops at having proved that he is not one of his Majesty's subjects, he shall be forthwith acquitted, but that, if he is an alien, and the offence was committed within some European colony, or settlement, then the Court, before whom his trial is held, shall forthwith acquit him. But although necessary for him to prove himself an alien, and also that the offence was committed within an European settlement, before he could obtain an acquittal forthwith, yet had we averred him to be a subject, and failed in our proof, we should have destroyed our own charge, and though the offence might not have been committed within any European settlement, yet he must have been acquitted. Upon penal statutes, your honours know, that it is not only unnecessary to aver that which may be negatived and therefore destroy the charge, but that it is not necessary to state provisoes and exceptions. The utmost latitude my learned friends could take, as affording a chance of acquittal in this case, was that, provided De Reinhard was not a subject, and his offence was committed in an European settlement or colony, he must be acquitted. Matters of defence, it is well known, the prosecutor need not anticipate, these were purely matters of defence, and as the effect of not proving an averment that the prisoner was a subject, would have been to negative our charge, we have not made it. This doctrine is supported by a variety of authorities which are very summarily stated by my learned friend, Mr. Chitty, vol. 1st, p. 284, that the necessity for the proving the excuse lies upon the defendant, and the contrary need not be averred by the prosecutor. Our not stating the

prisoner to be a subject in no way deprived him of the opportunity of shewing that he was an alien, because it is one of the enacting clauses of the act which gives him the right of shewing all that is necessary for his acquittal. My learned friend says farther, in speaking upon this subject, "if the exceptions themselves are stated in the enacting clauses, it will be necessary to negative them, in order that the description of the crime may in all respects correspond with the statute." Then, if this is the case on penal, surely on remedial, statutes, which this is, in the highest degree, it can not be necessary for us to aver that which might destroy our indictment. The provisoes of the fourth and fifth clauses are purely matters of defence, and the statute opens the door for their admission, but at the same time it must be remembered that it is on the prisoner that the weight of proof is placed. I must confess that I do not clearly understand my learned friend's argument relative to its being our duty to aver that the offence was committed in the king's dominions. Had the indictment stated that it was committed therein, it would have been bad, for the statute expressly sets forth that this act is to give cognizance over offences committed in the Indian country, not within the limits of either of the provinces of Upper or Lower Canada, or within the limits of any civil government of the United States of America, and which are therefore not cognizable by any jurisdiction whatsoever. Had we, I therefore repeat, charged the offence as being committed in the King's dominions the indictment would have been bad.

*Mr. Justice Bowen.*—In this case of Shaw's I perceive the indictment charged the offence to have been committed in British North America, to

wit, at the parish of St. Mary la bonne, in the county of Middlesex.

*Solicitor General.*—We are aware of the *scilicet*. It is a very old form to charge offences committed abroad, as being at a certain place, viz: at Middlesex. This, though not inserted, has not been overlooked, but we thought it unnecessary. We have charged the offence to have been committed *contra pacem domini regis*, which we consider to be sufficient, as we are justified by precedents in indictments for offences committed at sea and in foreign parts, in which the offence is laid *contra pacem domini regis*, which have always been held as good indictments. I believe I have adverted to all my learned friend's arguments, and whilst I apologize for the length of time, I fear I have so unprofitably occupied, I beg leave to make my acknowledgements for the indulgent hearing the Court has favoured me with.

*Mr. Stuart.*—In reply to the arguments which my learned friends, the Attorney and Solicitor General, have presented to the Court in opposition to our motions for a new trial and in arrest of judgement, I shall trouble you but very shortly upon the attention of your honours. To the observations which we have already had the honour of submitting as to the right possessed by the Court to grant a new trial, we have nothing to add, as we do not consider that our learned friends have at all met them by argument, though they have denied their correctness. The remarks as to the inconveniences which would result to prisoners from the Crown moving for new trials, should they be granted to prisoners, and a variety of suggestions of a similar description, furnish, in our opinion, no answer to the authority which we produced and supported by analogy. The arguments which

we adduced were broad and extensive, applicable to every case calling for the interposition of the power of the Court, our argument upon this part of the question was that the principles of criminal, were analogous to those of civil, law, and that, as a new trial can be granted in a civil case, so it ought and might be in criminal cases. To these propositions my learned friends have given no answer, except producing a dictum of a learned judge, for whom I entertain as high a respect as they possibly can do, saying that a motion for a new trial in criminal cases could not be granted, to which we have rejoined by exhibiting a later authority of a contrary description in which it is said that the question is not yet settled, besides the authority from *Viner* in which it is positively laid down that it may be, and an instance exhibited when it was granted. I quit, however, that part of the question, and on the motion in arrest of judgment I agree with my learned friends, the Crown officers, that nothing certainly can be admitted on a motion in arrest of judgment, except matters which appear upon the record; but I would submit to the Court that this very circumstance of precluding any thing but absolute matters of law from being adduced, furnishes a strong argument in favour of the principle of granting a new trial, or of entertaining the motion for one in all criminal cases as fully as a motion in arrest of judgment. I purpose to enter more minutely than I did before upon the branch of the question which is connected with a consideration of which were the *Courts* to whom this extended jurisdiction was given by the act of 43d Geo. III. And I set out by saying that I perfectly agree with my learned friend, *Vanselson*, that it was given only to the Courts of the three districts of the province established by the judica-

ture act and can not extend to this Court.—My reasons for agreeing with him are numerous, and first, I submit that this power must of necessity be given to a Court then in existence. That the act could not contemplate conferring jurisdiction on a Court not in being, I think a self-evident proposition. I ask then, (not to detain the Court by a protracted discussion upon this very manifest point.) was this Court in existence at the time, or is it to be said that the legislature looked forward in 1803, for ten, twelve, or fifteen, years, and seeing that a Court of Oyer and Terminer would be sitting, conferred upon it, by anticipation, jurisdiction over crimes and offences committed in the Indian territory. I take up the act of 1803, and I observe that it gives jurisdiction to the Courts of Lower Canada, and to the Court of Upper Canada, under special circumstances. To what Courts, I ask? It must certainly be to the Courts having power to try *then*, at the time the jurisdiction was conferred, to the Courts that were *in esse*. and not to Courts that were only *in posse*. In referring to the preamble I perceive one of the reasons for passing this act was that offences required to be punished over which the established Courts of this province had no jurisdiction, and the statute proceeds immediately to confer authority to the Courts of this province for the prosecution and trial of offences committed in the Indian territory, and directs that they shall be prosecuted and tried in the same manner in which offences of the same nature are usually tried. I again remark that, from the nature of the jurisdiction to be exercised, the Court of King's Bench best comports with the importance of it, the Court of King's Bench is identical, and perpetual, whilst a Court of Oyer and Terminer is changeable, and temporary. Whatever may be the variation

of its officers, however death may remove those who occupy its bar, and dignify its bench, the Court of King's Bench remains the same. Its power is not arrested by the mutations of time, or the changes of circumstances. Its processes are always in force. Its authority is always in exercise, whether it is term or vacation, still the identity and perpetuity of the Court is preserved. Its judges may be removed by casualties, or may vanish by death, but the Court is perpetual, it exists for ever. It participates in, or rather is, the seat of the monarch's power, and, like the King, it never dies. The Court that we have the honour to address in another room is a Court for ever. It has been, and will continue so a thousand years hence; that Court will exist for ever, and although different judges preside over it, it will still be the same Court: the Court of King's Bench. It could not be meant Courts that might be erected, for where was the certainty they would be erected, and, when erected, what was the certainty of their duration. That forms a considerable objection in our mind to any but the Courts of the three districts, being considered the usual Courts of the province. However much we may respect this Court, we can not but recollect that this Court is ephemeral, it was born a few days ago, and in few days hence it will die, and be no more heard of. Another material difference between the Courts is found in the mode of appointing those who are to hold the pleas. In the regular Courts they do not depend on the choice of any governor, they are the King's judges, independent of every consideration, depending on no contingency, removed by no incident except death. Although your honours are *judges*, yet it does not vary my argument at all; the appointment of Courts of Oyer and Terminer is a

a very high prerogative, a prerogative certainly where the King, who is the occasion, names his own judges. I do not, for a moment, insinuate that is not his prerogative, or that it is, or has been, improperly used, but I submit it is a very high prerogative of the Crown, and, with the page of history open to our view, we might be allowed to ask, might it not be made a powerful engine of oppression? Another difference that I notice is, that the judges are judges of the districts at large, and not confined to any particular one. For these reasons, we think, there is such a difference between the judges of the Court of King's Bench, and the justices, or commissioners of a Court of Oyer and Terminer, that we are induced to believe that the legislature did not intend, by the word judges, any other than the regular judges of the districts of the province. I come now, to the words, or part of the act, wherein the *Courts* of the province are specified, and contend that the difference is equally striking. My argument is that your honours are sitting under a commission as justices of a Court of Oyer and Terminer, and that this can not be the *Courts* of the province mentioned in the act as the Courts wherein offences of a like nature are usually tried. The third clause expressly provides that every offender may and shall be prosecuted and tried in the *Courts* of the province of Lower Canada, unless he shall, for certain reasons, be transmitted to Upper Canada for his trial. I allege that this Court can not be the *Courts* designated in the clause of the act I have just referred to. If I look to its commission, I shall see it is a Court for the district of Quebec, not for the three several districts, and therefore can not be the Courts of Lower Canada. When we have the Courts of Montreal, of Three Rivers, and of Que-

hec, there we have the *Courts* of the province of Lower Canada, and it is *Courts* in Lower Canada that are to try offences committed in the Indian territory. I take it that, unless we have these Courts, a prisoner has not all the benefit which the law intended him to have, because it might be probable that the legislature had conferred on one or upon some Courts rights or privileges which it may not upon another —

*Mr. Justice Bowen.*—Might not, according to your view, commissions issue under the act of 1793?

*Mr. Stuart.*—Undoubtedly, but our objection to it is, that would be a *Court*, and a *Court* of a district, when it is the *Courts* who are to try for offences committed in the Indian territories, and the *Courts*, not of a district, but of the province. Again, the inferiority of this Court must be apparent. The act, in making provision for the issuing subpoenas, declares they shall be issued by the judges; there are no judges under a special commission of Oyer and Terminer. We know of the twelve judges of England, and of the judges of the Court of King's Bench, but not of Oyer and Terminer. We here of A. B. C. D. E. F. being tried before justices of assize, but we do not call them judges. It is only when speaking of permanent Courts, that we speak of judges, and we say that those who sit under a commission of Oyer and Terminer are, neither technically nor popularly, judges. They are called justices technically, and commissioners popularly, but no one thinks of calling them judges. My learned friends have contended that the indictment is sufficient in describing the offence to have been committed within the Indian territories, but that such description did not prohibit more being added, and it did not exclude that it was within the jurisdiction of this Court.



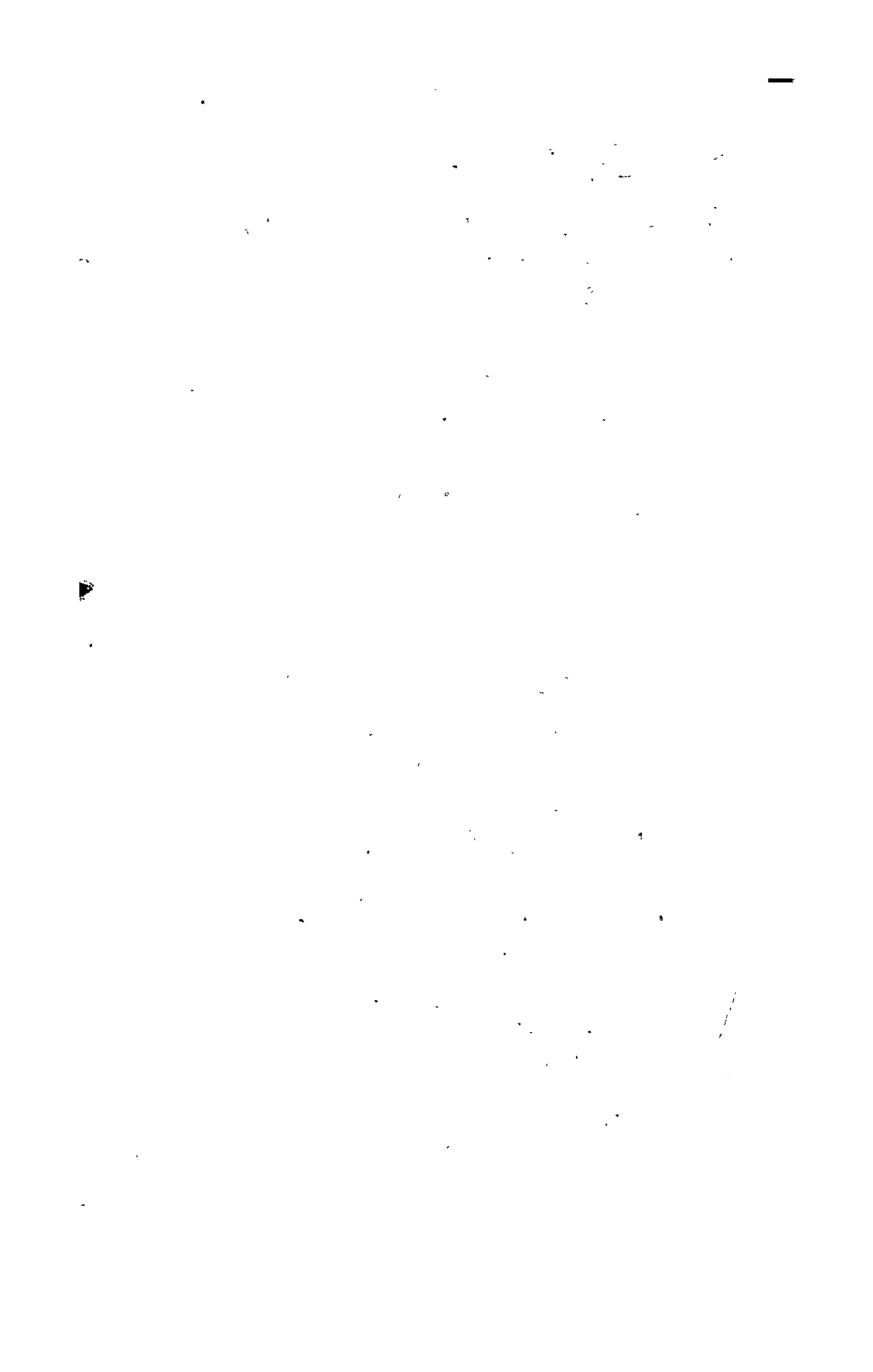
This description presents a mixed question of law and of fact. The judge directs the jury on the law, and the jury find the fact upon that direction; it is put upon record, and it is then, we are told, too late to plead that it was not in the King's dominions, and we owed him no allegiance, that we were not one of his subjects. At present, *non constat*, on the Crown's own shewing, that this offence might not be committed within the territory of some European nation. I said, before, and say still, my learned friends were bound, in their indictment, to give due certainty, and I allege that they did not. I was misunderstood by my learned friends before, it was not my intention to insist upon that being introduced into the indictment which would make it completely inoperative; but I stated that, merely to charge the offence as *contra pacem domini regis* was not sufficient, because the offence, if committed, might not have been against his peace, because he might not have any peace to break, and that it was incumbent upon the Crown, to prove that it was against his peace, before it could be entitled to ask the conviction of the prisoner. As to the laws of other nations, I know nothing of them till they are brought into evidence, nor any that justify one nation legislating for another. My learned friend, the Solicitor General, produced a most extraordinary reason for extending the power of trying offences committed in the Indian territory to Courts of Oyer and Terminer; he spoke of the inconvenience that might arise from the incompetency of the Court of King's Bench, from its not being full. I would ask if it be possible that the learned Crown officer can, with complacency, contemplate the Court of King's Bench of Lower Canada, as not assembling from incompetency. Are the private or personal feel-

ings of a judge, or two judges, to interfere with the jurisprudence of the country, and the regular and due administration of justice between man and man. Is the stream of law and justice to be stopped through the disinclination of any individual whatever. I hope not. I shall now advert very briefly to the distinction which we draw between crimes and felonies. I take it to be a fact that will not be denied, or I will produce authorities upon the point, that persons may be tried in England under the statute of Henry VIII. for felony. That being admitted, I refer to the act of 1803, and find it is to give jurisdiction over crimes and offences, which are not cognizable by any jurisdiction whatever. It might narrow my observations very much by stating that because treason and murder committed abroad are cognizable by the statutes of Henry VIII. they can not be under this act; for this act only gives jurisdiction over crimes and offences committed in the Indian territory which are not cognizable by any other jurisdiction. I will read the introduction of the preamble. "Whereas crimes and offences have been committed in the Indian territories and other parts of America not within the limits of the provinces of Upper or Lower Canada, or either of them, or of the jurisdiction of any of the Courts established in these provinces or within the limits of any civil government of the United States of America, and are therefore not cognizable by any jurisdiction whatever, and by reason thereof great crimes and offences have gone, and may hereafter go, unpunished, and greatly increase, for remedy whereof." For remedy of what? why, evidently for the crimes and offences that were not cognizable by any jurisdiction whatever. If then I shew that the offence for which that man

has been convicted is cognizable at the King's Courts at Westminster, I think I go a long way to shew that he has been illegally so, for that this is not the crime, or one of the crimes over which the legislature intended to give the Courts of Canada jurisdiction, because it was only to the trial of offences not cognizable by any jurisdiction, that the 43d Geo. III. made provision. I would ask if it is not evident that there are two offences, viz. treason and murder, which can not be tried under this act, because they can be tried in England; the case of Shaw completely embraces this principle. That the statute must be strictly construed, notwithstanding the observations of Mr. Solicitor General that as a remedial statute it ought to receive a most liberal interpretation, I contend that its construction ought to be most rigorous, and for the reason I before assigned in the early part of this discussion, viz. that where jurisdiction is conferred independent of locality, there the greatest strictness ought to mark the construction of acts of parliament; various reasons might be assigned, but I will not detain the Court by reference to them, as we think, in that case, your honours will find the doctrine completely recognized. Here the case is much stronger, a Court does exist where cognizance can be taken of this offence; the King's Court at Westminster. I shall refrain from troubling the Court further, conceiving I have offered sufficient in support of our propositions, the one for a new trial, and the other in arrest of judgment. A new trial we consider ourselves entitled to, upon the ground of the irregular receipt of the confession, and the misdirection of your honours as to the boundary-line, inasmuch as you laid down *northward* to mean *due north*. In arrest

of judgement, I conceive the indictment to be defective and that this Court has no jurisdiction.

*The argument being closed, the Court was adjourned till Friday morning, the 5th instant, at 10 o'clock, A. M.*



*Friday, 5th June, 1818.*

PRESENT AS BEFORE.

*Chief Justice Sewell.*—The Court is now called upon to deliver the judgment on the ground urged by the gentlemen who are counsel for the prisoner, on a motion in arrest of judgment, and also for a new trial. In support of the motion in arrest of judgment, the jurisdiction assumed by this Court has been objected to, on a variety of grounds, and very strictly examined, and in so doing, it has been held by the prisoner's counsel, and opposed by his Majesty's Crown officers, 1st, that the statute of the 43d of the King does not give to any Court the power which we have assumed in trying the prisoner for a felony, and 2dly, that, on the Quebec act, in conjunction with the 31st Geo. III. we have put a misconstruction, and have misdirected the jury, who have consequently delivered an erroneous verdict. The gentlemen argued first that, under this act, no Court has jurisdiction over felonies committed in the Indian territory, and they further urged that, if that power is given to any, it is by pre-eminence to those Courts which were then existing, and which had been previously known as the established Courts of the province, and this, being an extraordinary, or special Court, its power is denied. They have further avowed that, if they admitted that cognizance could, under the act, be taken of felonies, and by this Court, still the judgment ought to be arrested, because it was necessary that it should have appeared upon the indictment that the prisoner was a subject of his Majesty, and that the offence was committed within his Majesty's dominions, neither of which averments are made, and it is contended that for these omissions, judgment ought to be arrested. In exhibiting the reasons upon which the Court found its judgment, there are three

points arising out of the statute of 43d Geo. III. Cap. 138, connected with the question of jurisdiction, which will demand our serious consideration. I notice, before stating them, that on the 14th of the King it is alleged that we have put a construction as to the boundaries of his Majesty's ancient province of Quebec, which is erroneous, and that we have followed up that misconception, by misdirecting the jury as to the limits of the province of Upper Canada. The argument of the learned gentlemen then states that, by this misdirection and misconception, we have assumed a jurisdiction which is not warranted. There were two minor points stated, but having been before decided by the Court and the jury, they need only be mentioned: the first was as to any proof of the actual death of Keveny, and the second that the confession said to have been made before the Earl of Selkirk, was improperly received as evidence. These are the whole of the points which have been suggested, and the Court will consider them in the order they have been now recapitulated. Upon the question of jurisdiction, there are three points arising immediately out of the act of the 43d Geo. III. cap. 138, as stated by the counsel. 1st, by this statute no jurisdiction is given to any of the Courts of the province, to try for any felony committed in the Indian Territories, 2dly, that it has not given jurisdiction to this Court to try for any offence committed in the Indian territory, and, 3dly, that it was necessary to aver in the indictment that the offence was committed in the King's dominions, and that the prisoner was a subject of his Majesty. These points demand, and have received, the most serious attention from the Court, and the result of our consideration, as well as the reasons which have induced it, I shall develop in delivering our judgment. The object of the

act of the 43d, of the King, as we gather from its entire context, taking the act as a whole, appears to have been this; to give jurisdiction to the government of Lower Canada, for the punishment of offences committed, not solely in the Indian territories which were considered as belonging to the British dominions, but in other parts of America, viz. in European settlements, if committed by subjects; for this purpose in the enacting clause, after having recited in the preamble the necessity for the act, it declares that "from and after the passing of this act  
 "all offences, committed within any of the Indian  
 "territories, or parts of America, not within the  
 "limits of either of the provinces of Upper or Lower  
 "Canada, or of any civil government of the  
 "United States of America, shall be, and be deemed  
 "to be, offences of the same nature, and shall be  
 "tried in the same manner, and subject to the same  
 "punishment, as if the same had been committed  
 "within the province of Lower or Upper Canada."

In the second clause, it gives to magistrates, whom it authorises and empowers the governor, lieutenant governor, &c. to appoint, power, through the Indian territory, and in both Canadas, to commit any person guilty of any crime or offence, and makes it lawful for any person to apprehend and detain for the purpose of their being conveyed to Lower Canada, any person so guilty; "2d, and be it further  
 "enacted, that it shall be lawful for the governor  
 "or lieutenant governor, or person administering  
 "the government for the time being of the province  
 "of Lower Canada, by commission under his hand  
 "and seal, to authorise and empower any person or  
 "persons, wheresoever resident or being at the time,  
 "to act as civil magistrates, and justices of the  
 "peace, for any of the Indian territories, or parts of  
 "America, not within the limits of either of the



"said provinces, or of any civil government of the  
 "United States of America, as well as within the  
 "limits of either of the said provinces, either upon  
 "information taken or given within the said provin-  
 "ces of Lower or Upper Canada, or out of the said  
 "provinces in any part of the Indian territories, or  
 "parts of America aforesaid, for the purpose only  
 "of hearing crimes and offences, and committing  
 "any person or persons, guilty of any crime or of-  
 "fence to safe custody, in order to his or their be-  
 "ing conveyed to the said province of Lower Cana-  
 "da to be dealt with according to law, and it shall  
 "be lawful for any person or persons whatsoever,  
 "to apprehend and take before any person so com-  
 "missioned as aforesaid, or to apprehend and convey,  
 "or cause to be safely conveyed, with all conven-  
 "ient speed, to the province of Lower Canada, any  
 "person or persons, guilty of any crime or of-  
 "fence, there to be delivered into safe custody, for  
 "the purpose of being dealt with according to  
 "law."

The third provides, in certain cases, for the trans-  
 mission of the crime or offence, for trial (if the  
 governor shall see fit,) to the province of Upper  
 Canada, but it enacts that every such offender may  
 be prosecuted and tried in the Court of the pro-  
 vince of Lower Canada, and that he shall be so, un-  
 less "the governor, lieutenant governor, or person  
 "administering the government for the time being,  
 "shall, from any of the circumstances of the crime  
 "or offence, or the local situation of any of that wit-  
 "nesses for the prosecution or the defence, think that  
 "justice may be more conveniently administered,  
 "in relation to such crime or offence, in the province  
 "of Upper Canada, and shall, by any instrument,  
 "under the great seal of the province of Lower  
 "Canada, declare the same, then that every such

"offender may and shall be prosecuted and tried, "in the Court of Upper Canada, in which, crimes "or offences, of the like nature, are usually tried, "and where the same would have been tried, if such "crime or offence had been committed within the "limits of the province, where the same shall be "tried under this act." This clause goes on to provide that "every offender tried and convicted, "under this act, shall be liable and subject to the "same punishment, as may by any law in force, in the "province where he or she shall be tried, be inflicted for such crime or offence." Another provision made in this clause is, that the crime and offence, "may and shall be laid and charged to have "been committed within the jurisdiction of such "Court," and that the Court shall proceed on it, in every respect, as if it had really been committed in the province, or within the jurisdiction of such Court.

Having thus declared the mode of trial, and given the power of awarding punishment, the clause proceeds to give power to take the necessary steps to secure and enforce the attendance of witnesses. Authority is therefore given, to the Judges and other officers of the Court, to issue subpoenas and other processes, and such subpoenas and other processes are made as valid and effectual, and are to be in full force, and put in execution, in any parts of the Indian territories, &c. as fully and amply as any such subpoenas, or other processes are within the limits of the jurisdiction of the Court from which such subpoenas may have issued. By the next clause, the fourth, it provides and enacts "if any "crime or offence, charged and prosecuted, under "this act, shall be proved to have been committed "by any person or persons, not being a subject or "subjects of his Majesty, and also within the limits

"of any colony, settlement, or territory, belonging to any European states, the Court before which, such prosecution shall be had, shall forthwith acquit such person or persons, not being such subject or subjects, as aforesaid, of such charge." The final clause provides that, if any person be charged with an offence committed in the Indian territory, or any other offence committed elsewhere within the jurisdiction of this Court, the Court shall proceed with the trial, if the offender be a subject, "notwithstanding such offence shall appear to have been committed within the limits of any colony, settlement, or territory, belonging to any European state."

From this outline of the statute itself, it is manifest that the intention of the legislature was; first, to punish the perpetrators of offences committed in the Indian territory, whether they be, or be not subjects, whether they were subjects or aliens; 2ndly, to punish the perpetrators of offences committed in any European colony, or settlement, in America, being subjects; 3dly, it is equally manifest, that there was not given by this act, any increased jurisdiction over any offences committed in the provinces of Lower or Upper Canada, nor any jurisdiction over offences committed within the limits of any civil government of the United States of America; nor did it intend, 4thly, to give any jurisdiction over offences committed in European colonies, if perpetrated by aliens. Having glanced at the statute itself, and at the intention of the legislature in passing it, I shall proceed to apply it to the case of the prisoner in reference, 1st. to the jurisdiction of this Court over the person of the prisoner, and 2dly. to the jurisdiction of this Court, over the crime charged against him.

From the preliminary observations which I have made, as well as from a perusal of the act itself, it is evident that this statute claims, or assumes, all parts of America, not being within either of the provinces of Upper or Lower Canada, nor within the limits of any civil government of the United States of America, nor in the actual occupancy of any European state, to be Indian territory within British jurisdiction; and subject to British legislation; and assumes all persons there being; to be bound to that power, whether aliens or subjects. It has been argued at the bar, that the right of British legislation, did not extend so far; and reference was had to the American rebellion, to shew that, though formerly the whole of North America was subject to the British government, that then a part of it was severed, and that, although when no other civilized nation had possessions on this continent; it might make no difference as to her territory being correctly ascertained, as her jurisdiction could not be disputed, yet that now it is indispensable that it should be so ascertained, and that it should be proved on what authority the right is assumed to be possessed of legislating over the Indian territories. You will not of course expect me to refer to history upon this subject; it will be a sufficient answer that this claim has been put up from almost time immemorial, and confirmed, in almost innumerable instances, by the solemn acts of the King and Parliament. Then how stands the case at present before us? By the indictment and the verdict, it is said, the murder was committed in the Indian territories, or parts of America, not within the limits of Upper Canada, nor of Lower Canada, nor of any civilized government of the United States of America. Upon what part of the evidence they have made up their verdict, it is not for us to say; but it is therefore im-

material, upon this finding, whether he was a subject or not, because, being in the Indian territories, as described, he owed a temporary allegiance, and was clearly within the jurisdiction of this Court, which is what the Crown alleges. If, instead of this, the offence had been bona fide committed in some colony or settlement belonging to some European state, then the prisoner should have shewn it, as also that he was an alien. To enable him to do this, it was not necessary that the Crown should have alleged him to be a subject, nor that the offence was committed in the King's dominions. In the general course of practice it might be necessary for this plea to be made in abatement, or in accordance with general principles to plead it in law, but under the present statute, it evidently is not so, for upon the general plea of not guilty, it is competent to him to prove that he is an alien, and that the offence was committed in a colony belonging to some European state. The statute provides that pleadings in bar, or abatement, are unnecessary, because it admits them to be proved upon the general issue. If we again read the fourth clause, together with the fifth, this will be apparent in a moment. "4th. Provided, and be it further enacted, that if any crime or offence charged and prosecuted under this act shall be proved to have been committed by any person or persons, not being a subject or subjects of his Majesty, and also within the limits of any colony, settlement, or territory, belonging to any European states, the Court before which such prosecution shall be had, shall forthwith acquit such person or persons, not being such subject or subjects as aforesaid, of such charge. 5th. Provided nevertheless, that it shall and may be lawful for such Court to proceed in the trial of any other person being a subject or subjects of his

"Majesty, who shall be charged with the same or  
 "any other offence, notwithstanding such offence  
 "shall appear to have been committed within the  
 "limits of any colony, settlement, or territory, be-  
 "longing to any European state as aforesaid." The  
 consequence of these clauses is, that the door, by this  
 statute, is opened to the prisoner to prove two facts,  
 upon the trial of the general issue, which will im-  
 mediately entitle him to demand his acquittal, but,  
 as was observed by his Majesty's Crown officers,  
 the *onus probandi* is manifestly thrown upon the  
 prisoner, and for, as we think, a reason sufficiently  
 obvious. He can best prove them, as well as has  
 most interest in doing so, but having neglected to  
 do so, it is now matter of indifference whether he  
 be or be not a subject. The finding of the jury is  
 in manner and form as he stands charged in the in-  
 dictment, that charges the murder to have been  
 committed in the Indian territory, and the finding  
 is in the Indian territory, and he can not now con-  
 tradict it. It is impossible that he can stand here  
 now in a better situation than he did upon his trial.  
 He must there have proved, not only that he was  
 an alien, but also that his offence was committed  
 within some European settlement. Had he proved  
 he was an alien, he must, in addition, have shewn  
 that the offence was perpetrated within an Europe-  
 an colony, and why should he stand now in more  
 favourable circumstances than before conviction,  
 where half of what must have constituted his defence  
 is cut away by the finding of the jury, which de-  
 clares that the offence was committed in the Indian  
 territory, and not in any European colony? This  
 being the state of the case, there is a defect which  
 is unanswerable; he should have proved that  
 he was an alien upon the general issue which he  
 pleaded, for it is most singular that he should now

call upon the Court to hold him to be an alien, and entitled to an arrest of judgment, without a tittle of proof, not so much even as an affidavit, that he is so, whilst, on the other hand, the positive finding of the jury declares it to be a matter of no consequence, as the offence was committed in the Indian territory. It is manifest if, before the finding of the jury, we could not extend to him the right of acquittal, or relieve him from the authority of the statute, that we can not now that the verdict of the jury has actually disproved half of that which it was necessary for him to prove, to justify the Court in forthwith acquitting him. This much then, relative to the person of the prisoner, and I now shall consider the crime wherewith he is charged. It is felony and murder, and it has been argued, and very ably argued too, by the gentlemen engaged on the defence, that we, that is the Courts generally, have no jurisdiction over felonies committed in the Indian territories, and specially it has been urged, that a Court of Oyer and Terminer has not. It will be better for us therefore to settle this point, and we will enquire first, whether to any of the Courts of this province jurisdiction is given over felonies committed in the Indian territory, and if we find that there is, we will prosecute the enquiry so as to ascertain whether this Court ought to be considered one of them. In reference to the first question; the gentlemen engaged on the defence, in support of their position, have produced the case of Shaw at large, and contend that it satisfactorily proves that, under the term "crimes and offences," power is not given to try for a felony. Any decision of my Lord Ellenborough is unquestionably entitled to the utmost respect, and so is this, and it will receive it from this Court. It is evident, upon looking at Shaw's case, that it is nothing more than a trial

founded on a particular statute, and is therefore merely an exposition of that statute. The statute of 42d Geo. III. cap. 85, on which Shaw's case arises, is an extension to other cases of a previous statute, a statute of William and Mary, which made provision for the trial of offences which might be prosecuted by indictment and information, and the case is nothing but an exposition of that particular statute. Offences prosecuted, or that can be prosecuted, by indictment and information, must necessarily imply misdemeanors, and misdemeanors only. As it is an undoubted principle of law that felony can not be prosecuted by information, it is manifested no Court could assume the power of awarding punishment upon a conviction on a statute over a class of offences which was not included in the statute upon which the conviction was obtained. It was not doubted that the word *crimes* included *felonies*, indeed the counsel for Shaw, Mr. Selwyn, said himself, about the application of the words, crimes and offences, to felony generally, there was no difficulty, the arduous task was to determine whether, in the particular instance then before the Court, it could be extended to them. Here we see the manifest difference between a general exposition of a principle, and the special application of it to a particular case. My Lord Ellenborough, in pronouncing judgment in this case of Shaw, says, (referring at the same moment to the 42d Geo. III. Cap. 65,) "the word crimes then, for the reasons stated does include capital felonies" so that upon the whole of this case of Shaw being examined, we perceive that the decision is upon a particular statute, and is of course limited to those *sui generis*. From 4th Blackstone, page 5, was shewn very properly that "crime" includes the offences of "murder, treason and robbery," which are felonies. In the



last edition of that work, with Mr. Christian's notes, there is, at this place, some notes relative to the distinction between crimes and misdemeanors, in which language can not be clearer or stronger, and I add them because, since Mr. Blackstone is no more, this construction of his sentiments comes from a man certainly entitled to our highest respect, and I will therefore read it, "In the English law, misdemeanor is generally used in contra-distinction to felony, and misdemeanors comprehended all indictable offences, which do not amount to felony; as perjury, battery, libels, conspiracies, attempts and solicitations to commit felonies, &c." In the following page, in considering the distinction between public crimes, and private injuries, he is equally clear. "The distinction," he says, "between public crimes and private injuries seems entirely to be created by positive laws, and is referable only to civil institutions. Every violation of a moral law, or natural obligation, is an injury, for which the offender ought to make retribution to the individuals who immediately suffer from it, and it is also a crime, for which he ought to be punished to that extent, which would deter both him and others from a repetition of the offence. In positive laws those acts are denominated injuries, for which the legislature has provided only retribution, or a compensation in damages; but when from experience it is discovered that this is not sufficient to restrain within moderate bounds certain classes of injuries, it then becomes necessary for the legislative power to raise them into crimes, and to endeavour to repress them by the terror of punishment, or the sword of the public magistrate. The word crime has no technical meaning in the law of England. It seems, when it has a reference to positive law, to com-

"prehend those Acts which subject the offender to punishment. When the words high crimes and misdemeanours are used in prosecuting by indictment, the words high crimes have no definite signification, but are used merely to give greater solemnity to the charge." One of the objects then of legislative interference is, by the terror of the punishment upon the offender, and the sword of the civil magistrate, to repress crimes. From Mr. Blackstone's definition, and Mr. Christian's notes, there can be no doubt then entertained, but that the words "crimes and offences" may, and do, in ordinary acceptation, include felonies; it only remains then to enquire, does the term "crimes and offences," under the present statute, include, and give jurisdiction over them? The true question is this, whether, looking at the statute upon which the prisoner is charged, in connection with its context, it appears to have been the intention of the legislature to give jurisdiction in cases of felony, by the use of the words "crimes and offences," which so frequently appear in the enacting clause of this statute. This clause is certainly most comprehensive; it is in general words, and amply sufficient to include felonies. The jurisdiction is given in these words, which must certainly comprehend felonies.

Sec. 1. "All offences committed within any of the Indian territories, shall be, and be deemed to be, offences of the same nature, and shall be tried in the same manner, and be subject to the same punishment, as if the same had been committed within the provinces of Lower or Upper Canada." The words made use of are, *all* offences, and *any* of the Indian territories, but, notwithstanding this general description as to crime and locality, it has been urged, however, at bar, and plausibly urged too, that the preamble of this statute is different, it will be

necessary, therefore, to have recourse to the preamble, to ascertain whether it is in opposition to these words, and it is as follows: "Whereas crimes and offences have been committed in the Indian territories, and other parts of America, not within the limits of the provinces of Upper or Lower Canada, or either of them, or of the jurisdiction of any of the Courts established in these provinces, or within the limits of any civil government of the United States of America, and are therefore not cognizable by any jurisdiction whatever, and by reason thereof, great crimes and offences have gone, and may hereafter go, unpunished and greatly increase." Now it is said, in reference to this, (and said truly,) that for murder committed by a subject in a foreign territory, there was a jurisdiction already established by the Act of 33d, Henry VIII. cap. 23. and a method provided, in which that jurisdiction shall be carried into effect, viz. "that murder confessed by a person, who has been examined by three of the Council, or who is vehemently suspected to be guilty, may be heard and determined before commissioners of Oyer and Terminer, in any county of England to be named by the King." Originally this Act extended to treason, and misprision for treason, but has been repealed in relation to those crimes, but not in relation to murder. Here then, it has been argued, is the Court where the offence of murder, if committed in foreign parts, should be tried. The question is, is this the true import of the preamble of the act of the 43rd, Geo. III. cap. 138? Does the context agree with the text? The preamble can not be understood but with reference to the state of America. The object of the whole statute, is to provide a local jurisdiction in America, for the trial of crimes committed in the Indian territories, and why? The

preamble of the act tells us in a moment. It tells us that great crimes and offences are committed; where does it say they are committed? Not in Lower Canada, where they might be tried; not in Upper Canada, where they might be tried; not within the limits of any civil government of the United States of America, where they might be tried: this mention of the province of Canada, and of the United States of America, demonstrates that these words must be understood in reference to a jurisdiction strictly local. The preamble recites that crimes are committed in the Indian territory, and are not cognizable, by any jurisdiction whatsoever, (that is, in America,) or not cognizable by any jurisdiction adapted to the necessity of the case. By this act, the legislature say, we will, for remedy of this evil, erect a competent jurisdiction in America. Should this appear a fair and obvious exposition of the preamble, yet it may still be said that preambles are not always a guide to expound statutes; Case of *Barker, versus Riding*, Jo. 164, M. S. Car. II. They are not, most certainly, but again, on the other hand, it has been settled that though "the preamble may explain, it can not restrain, the words of enacting clauses." In this, and all cases, I take it that the preamble and enacting clauses, are to be construed together, as the context of the statute. That these observations on the effect of preambles, or their operation upon enacting clauses of an act, are correct, numerous authorities might be produced to demonstrate. I shall, however, only refer to one or two, as clearly establishing the principle I have laid down, that the preamble and the enacting clauses must jointly be construed with reference to the intent of the framers of a statute, which upon all occasions must be our guide in determining the interpretation or exposition it ought to receive. In

Viner's abridgement, 19 vol. p. 521, sec. 100, it is said, "the preamble is a key to open the minds of the makers, and the mischiefs they intend to remedy;" this was said by Dyer, ch. J. Pl. 369, in case of Stowel, versus Zouch; I refer also to Coke upon Littleton, 79 a, for the same doctrine. At the same place in this volume of Viner is the dictum of three justices, in the case of Barker versus Riding beforementioned, relative to preambles, and it is immediately followed by an extract from 8th Mod. 144, in the case of the King versus Althoes, which elucidates and enforces the position relative to the joint exposition of the clauses and preamble. "*Per. Cur.* It is no rule, in the exposition of statutes, to confine the general words of the enacting clauses to any particular words introducing it, or to any such words even in the preamble itself; it is true, my Lord Coke commands a construction which agrees with the preamble, but not such as may confine the enacting part to it." My Lord Chancellor Cowper, a man most certainly entitled to our respect, seems to go all fours with this construction, in saying that he could, "by no means, allow the notion that the preamble shall restrain the operation of the enacting-clause, and that, because the preamble is too narrow or defective, therefore the enacting clause, which has general words, shall be restrained from its full latitude, and from doing that good which the words would otherwise, and of themselves, import, which (with some heat) was a ridiculous notion, and instanced in the Coventry Act." This seems to me to apply precisely to the case before us, and to go the whole length I had taken the principle; but to conclude my Lord Chancellor's remark on the Coventry Act, which he said, "if it had recited the barbarity of cutting Coventry's nose, and the enact-

"ing clause had been general, viz. against the cutting of any member, where the man is disfigured or defaced, it might, with equal reason, be objected that the cutting of the lips, or putting out the eye, would not have been within the act, because not within the preamble, W. m. s. rep. 320, trin. 1716, in case of Copeman versus Gallant." This opinion on the Coventry act seems expressly adapted to this case, and is conclusive as to the mode in which law, as well as common sense, requires that preambles and enacting clauses shall be construed in relation to each other. The principle has indeed been carried much farther, it has been held that, "all things which may be taken within the mischief of the statute, shall be taken within the equity of it," and, under this interpretation, it is said that, consideration being given to "the true reason of the remedy, and then the office of the judge is always to make such construction as redresses the mischiefs, and advances the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and *pro privato commodo*, and to add force and life to the remedy, according to the true intent of the makers of the act, *pro bono publico*." This also is from 19th Viner, page 525. Without saying that it is the province of the judge to go that length, I shall apply the general rules to this case. In the first instance, the words that give the jurisdiction are, "all offences committed within any of the Indian territories shall be, and be deemed to be, offences of the same nature." How can words be stronger or more general? If we go a little farther to the third clause, we shall find it enacts, "that the Court may and shall proceed therein," (that is in each case of crime or offence committed in the Indian territory,) "to trial, judgement, and execution, or other punishment, for such crime or

“offence in the same manner, as if such crime or offence had been really committed within the jurisdiction of such Court.” These words are certainly as general, and as strong, as those of the former clause, which gives the jurisdiction. It is impossible to make them stronger, or more general, and it is equally impossible to take for them an interpretation more limited than the words import, and that too when it is confirmed by a second, which, without any exception, certainly confirms the most extensive jurisdiction. But there is a part of these words which requires and deserves a more particular consideration. What are we to understand by the words, judgement and execution, in connection, as they are, with the words, “or other punishment?” By the two expressions, the act must surely refer to the same punishment as is usually awarded, in similar cases, in the province where the same may be tried. Referring then to the case of Shaw, which is a clergyable offence, what would be the record? or take a case nearest to that of the prisoner, a case of felony and manslaughter, which may be found in Blackstone’s appendix, Hunt’s case; “upon their oath say” (that is the jury) “that the said Peter Hunt is not guilty of the murder aforesaid above charged upon him, but that the said Peter Hunt is guilty of the felonious slaying of the aforesaid Samuel Collins, and that he had not, nor hath, any goods or chattels, lands or tenements, at the time of the felony and manslaughter aforesaid, or ever afterwards to this time, to the knowledge of the said jurors: And immediately demanded of the said Peter Hunt, if he hath, or knoweth, any thing to say, wherefore the said justices here ought not, upon the premises and verdict aforesaid, to proceed to judgement and execution against him, who sayeth that he is a clerk, and prayeth the benefit of

"clergy to be allowed him in this behalf; whereupon,  
 "all and singular the premises being seen, and by  
 "the said justices here fully understood, it is con-  
 "sidered by the Court here that the said Peter Hunt  
 "be burned in the left hand and delivered, and im-  
 "mediately he is burned in his left hand and is de-  
 "livered, according to the form of the statute."

What then do judgement and execution imply? they imply that punishment which is usually awarded in all cases of felony and pre-eminently the punishment of death; judgement and execution must imply, in the language of the law, *ultimum supplicium*, the judgement of death, and its execution, and that it is the punishment of death which is by these words designated in the statute, is manifest from what immediately follows, viz. or other punishment. The words are, "the Court may and shall proceed to trial, judgement, and execution; or other punishment, for such crime or offence, in the same manner in every respect, as if such crime had been committed within the jurisdiction of such Courts." To what end is it, if *only* any other punishment than that of death may be awarded under this act, to what end, I ask, is it that the words judgement and execution are made use of? It is manifest, it is evident, that the legislature, in this act, intended to give us the power of proceeding to judgement and execution, to award the punishment of death, emphatically the *ultimum supplicium* of the law. If so, if power is expressly given to inflict the punishment of death, it must necessarily follow that it was the intention of the legislature, by the previous clauses, to give the power of trying for felonies, because the punishment of death can only be inflicted after convictions for felonies, and the implications, which were drawn from the preamble by the gentlemen engaged on the defence, are ne-



cessarily done away. If these words, judgement and execution, by legal and technical construction, mean the *ultimum supplicium*, we, that is the Courts of Lower Canada, have these powers, and there is nothing to stay us in this Court if we have them, and that we have them, can, I think, hardly be denied. It is useless, to comment at length upon clauses which, in the strongest and most forcible way, declare, in almost every word, that we have this power. By the first clauses in the act it is declared, that the offence shall be tried in the same manner as if the same had been committed in Lower Canada. Now we try by various ways, in criminal proceedings, but always by a jury, sometimes by the Court of King's Bench, and sometimes by a Court of Oyer and Terminer. By the 3d clause it provides that the offender may and shall be prosecuted and tried in the Courts of the province of Lower Canada. It does not mention any particular Court, it is as if it said in any Court; let the offence be tried at the customary tribunal; but proceeding a little farther in this clause, it designates, to a certain extent, what Court; "the Court in which crimes and offences of a like nature are usually tried," that is to say, in any Court not a civil, but criminal, Court; and it goes on to say, as a further designation, and certainly it is a most decisive one, "and where the same would have been tried if such crime or offence had been committed within the limits of the province." What can be plainer, let me ask? where, had this offence been committed within this district, would it have been tried, but in this Court? The Crown has the right of choosing its own Court; would it not have been in this Court that the prisoner would have been tried? These clauses are so forcible, and carry their own strength so completely with them, that it is re-

ally unnecessary to expatiate upon them. I shall now touch briefly upon the other points. What I have hitherto said has been upon the 4<sup>th</sup>, what I have now to remark upon, is that which is connected with the 14<sup>th</sup>, of the King. The points connected with this act had been already decided during the trial, yet if there had been any thing advanced to induce the Court to change its opinion, you should assuredly have had the advantage of it, but there is nothing: the act of the 14<sup>th</sup> of the King, is commonly called the Quebec Act. In the first clause of this act, the boundaries of His Majesty's ancient province of Quebec are described. It is unnecessary to read the whole, but it reaches the river "commonly called Niagara, and then along by "the eastern and southeastern bank of Lake Erie, "following the said bank, until the same shall be intersected by the northern boundary granted by the "charter of the province of Pennsylvania, in case "the same shall be so intersected, and from thence "along the said northern and western boundaries of "the said province, until the said boundary strike "the Ohio. But in case the said bank of the said "lake shall not be found to be so intersected, then "following the said bank until it shall arrive at that "point of the said bank which shall be nearest to "the north western angle of the said province of "Pennsylvania, and thence by a right line to the "north western angle of said province; and thence "along the western boundary of the said province; "until it strike the river Ohio, and along the bank "of the said river, westward, to the banks of the "Mississippi, and northward to the southern boundary of the territory granted to the merchants and adventurers of England, trading to Hudson's Bay." The statute describes the entire line of circumscription of the province which it erects, under the name

of the province of Quebec, and describes it very exactly. The line I have been so particular in reading is the line upon which it is considered that a misdirection has been given by the Court to the jury. It is necessary to observe, relative to this line, that it is a curved line in some parts, and a straight line in others. Thus, whilst going along the banks of the Ohio, it is a curved, but as soon as it reaches the banks of the Mississippi, it becomes a straight line. It follows the banks of the Ohio in a curve, but the words of the statute are imperative when it reaches the mouth of the Mississippi. It is to proceed northward, in a straight line. If it had been intended that it should continue on, along the banks of the Mississippi, it would have said so. It carries the line to the bank of the Mississippi, and what right have we to say that it should run along, or within, the banks where they who framed the act omit it. They say, thence it is to run northward. You have contended that this means to incline north, according to the course of the river; it is impossible for us to say so, we are bound to take the statute in its words. It is impossible for us to do otherwise, it is a fixed and certain boundary, and, according to the statute, we have, to the best of our knowledge, decided it. In the decision we have made, we are supported by the authority of my Lord Hardwicke, in the case of Penn and Baltimore. In the disputes between Penn, the proprietor of Pennsylvania, and my Lord Baltimore, on the question relative to the limits of Maryland, a similar difficulty arose, and the case is to be found at length, in 1 Vesey Senr. 444. I mention this circumstance now because, although decided before, the Court have taken upon themselves to decide the limits of Canada. Original jurisdiction relative to the territories of the King, is in the King and his council. In this dependent

province. nevertheless, we have been compelled to give a decision upon the question, not from any wish on our part, but because it was brought before us, and there was no evading it. The power of deciding finally is at home, the question will be taken before the King and his council, and in deciding the limits of Upper Canada, they will either confirm or reverse our decision, according as we have done right or wrong. As to any consequences that may result from our error, if error we have committed, they will be obviated by the supereminent authority to whom the question is referred.

It has been urged to us that no proof of the death of Keveny was shewn. It has been settled, the jury have settled it, but I wish there could be a doubt entertained about it, I wish it were possible, but I fear it is not. It has been urged that we admitted as evidence a confession of the prisoner before the Earl of Selkirk. It no doubt was intended to be stated accurately, but it was not so in fact. The written paper in his own hand-writing we did receive, the certificate at the bottom by Lord Selkirk, we did not, because there was no proof of it by Lord Selkirk, or his clerk; we therefore rejected it, specifically on the ground of there being no proof; it went only to this, that previous to the delivery of the examination and its being signed, he declared the contents of the paper was true, in presence of Dr. Allan and a Mr. Dease, who was called on to witness it. This confession was not an unsupported document: we had the same thing over again through Vitchie, and Capt. D'Orsonnens. The paper in his hand writing therefore stands at common law. The certificate of Lord Selkirk was rejected. I shall not touch upon the motion for a new trial; the authorities against it are too strong, indeed they seem to be almost conclusive. We abstain, however,

from entering upon it, or giving any decision. On the whole, the order of the Court is, that the prisoner do take nothing by his motion.

*Mr. Justice Bowen merely expressed his concurrence in the litigious view of the questions, taken by his honour the Chief Justice, in the judgment which he had delivered, and observed that if the construction of the prisoner's counsel of the act of 1803 was correct, then their practice for twenty five years, namely, from 1798, had been erroneous as it was pretty notorious that the Court had sat to try felonies of all kinds.*

*Proclamation was then made for silence, whilst sentence of death was pronounced against the prisoner by his honour the Chief Justice.*

## SENTENCE.

*Charles De Reinhard.*—You have been indicted by the grand jury of this district, for the crime of murder. Your trial has occupied an extraordinary duration of time; during it, you have had the assistance of counsel, who have ably, assiduously, and faithfully, performed their duty. On the part of the Crown officers, every degree of liberality consistent with their station, was allowed you. The Court have heard you fully, upon every point that has been suggested on your behalf, and the country, upon whom you put yourself for the trial, has given it you, and has found you guilty. To the moment of your conviction the presumption to which you was entitled was that of innocence, but you are no longer so; you stand then convicted of the highest crime on the black catalogue of human turpitude. You stand a convicted murderer. In all countries the crime of murder is imperiously punished with death, because as it is a crime of malice aforethought, he that has once imbrued his hands in innocent blood, easily can again. Whoever has shewn a disposition to lift, in cool blood, his hand against his brother, is a murderer in heart, and the law of God and of man is, whoso sheddeth man's blood, by man shall his blood be shed. By every tie, human and divine, in obedience to the positive command of God, as well as to the laws of society, we are bound to cut off a murderer from the land. The positive command of God is, ye shall take no satisfaction for the life of a murderer who is guilty of death, but he shall surely be put to death, for the land can not be cleansed of the blood that is shed therein, but by the blood of him that shed it.

There are some murders that call more particularly, from their atrocity, for punishment, and I fear your's is one of that description. There is no doubt that Owen Keveny fell by your hand, and that marked by circumstances of more than ordinary atrocity. You lifted your hand against your brother in dereliction of every duty and of every principle which your former situation in life might have taught you, if not as a man, as a soldier. The life that you took was the life of your prisoner, and from that circumstance peculiarly entitled in a military, as well as a civil point of view, to your protection, making your crime therefore the more heinous, as all those laws which soften the horrors of war were broken, when you murdered a prisoner; you took away that life which, in another point of view, you were bound to protect, he was your prisoner, a prisoner whom you was conducting to answer to the law of his country, whose minister you were, having first arrested him, and then retaken him. I shall now advert to the crime itself, and the place where it was committed. It was perpetrated in a country where crime had flourished to an extent to alarm every good subject, and imperatively call upon them to aid in bringing to punishment those who so daringly violated the law. It was under these circumstances that you, in cold and unprovoked malice, took the life of Keveny, and stand to receive the judgment of the law for the felony and murder. I should be unworthy of the situation I hold if I could, even to you, say any thing for the purpose of aggravating feelings already, I hope, sufficiently agitated. No, the whole is a duty too painful to allow such an unworthy feeling to creep in, and that which yet remains is the most painful. Before that last and agonizing part of my duty is performed, it is right

to mention, but not to excite a hope of pardon, that some time will elapse, from the peculiar circumstances of your case, previous to the judgment being carried into execution, but let the delay not delude you into a hope of pardon, and that you can ultimately avoid your sentence. No, in this world there is no hope for pardon, there can not be; whoso sheddeth man's blood, by man shall his blood be shed, is the law of God and man on earth. Whilst I say this, I am bound, on the other hand, to protect you from despair; there is another world, another bar at which, and another judge before whom, you have to appear, and where you, a murderer, to your unspeakable joy, may hope for pardon, by sincere and heartfelt repentance towards God through our Saviour Jesus Christ. Let me then urge upon you most strenuously, by a consideration of your need of the atoning blood of a Saviour, to wash you from your guilt, to use the interval between this awful, and that still more awful, moment which will, though delayed for a time, soon introduce you to another world, in recommending to the Saviour of the lost, your precious and immortal soul; and I conjure you let not a hope of pardon lead you to trifle with the precious moments between you and death. It is my duty thus solemnly to put you on your guard against such a delusion; however long delayed, the execution of your sentence must arrive eventually. I have little more to say to you on this awful occasion, only, as I always do from persons in your situation, endeavour to draw from you a lesson of instruction to those who surround you. We behold in you an awful example of the depravity of human nature, and ought to learn to watch our footsteps lest we fall. Till you went into that unhappy country, you appear to have supported the best of characters in the army,



and as a man. How guarded then ought we to be against the first temptations to sin, seeing that such is our slippery foothold, that there are none but, even with the best principles, may fall, ere he is aware, into the worst and most atrocious crimes. By the absolute example of you, Charles De Reinhard, I wish to warn this assembly that the first impression of crime must be resisted peremptorily, however slight, for there are none, (as you are an awful example,) but may be suddenly destroyed by its advances.

You go from this tribunal to another where motives may be estimated, and to your unspeakable joy, at that bar is the Saviour of the world, who laid down his life for enormous sins, such as yours and ours, for the sins of the whole world. Let me recommend you to him in fervent prayer, and to his blood which cleanseth from all sin. Bring to mind that nothing but the most sincere and contrite repentance can ultimately secure an interest in his atoning blood, and may a consciousness of an interest in it give you relief in your mind till the period, and support you at the time, of your ultimate punishment.

The judgment of the law is, that you Charles De Reinhard, be taken to the goal of our Lord the King, for the district of Quebec, and from thence to the place of execution, on Monday now next arriving, being the 8th of this instant June, and there be hanged by the neck till you are dead, and that afterward your body be dissected and anatomized.

And may that God, to whose intercession and tribunal I have recommended you, have mercy upon your soul.

FINIS.

# APPENDIX.

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(APPENDIX A.)

PROVINCE OF }  
LOWER CANADA. }

(Signed) J. C. SHERBROOKE.

(L. S.) *GEORGE the Third, by the Grace of God, of the  
United Kingdom of Great Britain and Ire-  
land, King, Defender of the Faith.*

TO our trusty and well beloved, the Honourable Jonathan Sewell, Esquire, Chief Justice of and for our Province of Lower Canada, the Honourable James Monk, Esquire, Chief Justice of our Court of King's Bench, for our District of Montreal, in our said Province of Lower Canada, the Honourable Oliver Perrault, and Edward Bowen, Esquires, Justices of our Court of Kings Bench, for our District of Quebec, in our said Province of Lower Canada, the Honourable Isaac Ogden, James Reid and Louis Charles Foucher, Esquires, Justices of our said Court of King's Bench, for our said District of Montreal, and the Honourable Pierre Bedard, Esquire, the Provincial Judge for our District of Three Rivers.

Know Ye that we have constituted and assigned you, or any two of you, of whom we will, you the said Jonathan Sewell, or you the said James Monk, to be one, our Justices, the Goal of our said District of Quebec of the Prisoners therein being for this time to deliver, and therefore we command you, that at a certain day, which you or any two of you, of whom we will, you the said Jonathan Sewell, or you the said James Monk, to be one, shall appoint, you do meet at our City of Quebec, in our aforesaid District of Quebec, our Goal of our aforesaid District

of Quebec to deliver, and to do thereupon what to Justice shall appertain, according to the Laws and customs of England, and of our said Province of Lower Canada, saving to us our amerciaments and other things to us thence appertaining. For we have commanded our Sheriff of our said District of Quebec, that at a certain day, which you or any two of you, of whom we will you the said Jonathan Sewell, or you the said James Monk, to be one, to him shall make known, all the Prisoners of our said Goal, and their attachments before you, or any two of you, of whom we will, you the said Jonathan Sewell, or you the said James Monk to be one, he then cause to come.

In Testimony whereof, we have caused these our Letters to be made Patent, and the great seal of our Province of Lower Canada to be hereunto affixed, and the same to be entered of record in our Register's office, or office of Enrolement, in our said Province of Lower Canada. Witness our trusty and well beloved, Sir John Coape Sherbrooke, Knight Grand Cross of the most Honourable Military order of the Bath, Captain General and Governor in Chief, in and over the Province of Lower Canada, Vice Admiral of the same, &c. &c. &c. at our Castle of St. Lewis, in our City of Quebec, in our said Province of Lower Canada, the twenty ninth day of April, in the year of our Lord, one thousand eight hundred and eighteen, and in the fifty eighth year of our Reign.

(Signed) J. C. S.

(Signed) JOHN TAYLOR, }  
Depy. Secy. }



PROVINCE OF }  
LOWER CANADA. }

(Signed) J. C. SHERBROOKE.

(L. S.) *GEORGE the Third, by the Grace of God, of  
the United Kingdom of Great Britain and Ire-  
land, King, defender of the Faith.*

TO our trusty and well beloved, the Honourable Jonathan Sewell, Esquire, Chief Justice of and for our Province of Low-

er Canada, James Monk, Esquire, Chief Justice of our Court of King's Bench for our district of Montreal in our said Province. The Honourable Oliver Perrault, and Edward Bowen, Esquires, Justices of our Court of King's Bench for our District of Quebec in our said Province of Lower Canada, the Honourable Isaac Ogden, James Reid, Louis Charles Foucher, Esquires, Justices of our said Court of Kings Bench for our District of Montreal, and the Honorable Pierre Bedard, Esquire, the Provincial Judge for our District of Three Rivers in our said Province.

Know ye, that we have constituted and assigned you, or any two of you, of whom we will you the said Jonathan Sewell, or you the said James Monk, to be one, our Justices to enquire more fully the truth, by the oaths of good and lawful men of the District of Quebec in our said Province of Lower Canada, and by other ways, methods, and means, by which you shall or may the better know, as well within liberties as without, by whom the truth of the matter may be the better known and enquired into, of all Treasons, Misprisions of Treasons, Insurrections, Rebellions, Counterfeittings, Clippings, Washings, false Coinings, and other falsities of the money of Great Britain and other Kingdoms and Dominions whatsoever, and of all Murders, Felonies, Manslaughters, Killings, Burglaries, Rapes of Women, unlawful Meetings and Conventicles, and unlawful uttering of words, assemblies, Misprisions, Confederacies, False allegations, Trespasses, Riots, Routs, Retention, Escapes, Contempts, Falsities, Negligences, Concealments, Maintenances, Oppressions, Champerty, Deceit, and all other evil doings, offences, and injuries whatsoever, and also the accessaries of the same, within the District aforesaid, as well within liberties as without, or committed within any of the Indian Territories, or parts of America not within the limits of either of the said Provinces of Upper or Lower Canada, or of any civil Government of the United States of America, by whomsoever, and in what manner soever, done, committed or perpetrated, and by which person or persons, how and after what manner, and of all other articles, and circumstances, concerning the premises, and every of them,

or any one or more of them, in any manner whatsoever; and the said Treasons, and other the premises, according to the Laws and customs of England, and of our said Province of Lower Canada, for this time to hear and determine, and therefore we command you, that at certain days and places which you or any two of you, of whom we will you the said Jonathan Sewell, or you the said James Monk, to be one, shall for this purpose appoint, you do, concerning the premises, make diligent enquiry, and all and singular the premises hear and determine, and those things do and fulfil in form aforesaid, which are to be done as to Justice doth belong, according to the Laws and customs of England, and of our said Province of Lower Canada, saving to us our amerciements and other things to us thence appertaining. For we have commanded, and hereby do command, our Sheriff of our said District of Quebec, that at certain days and places which you or any two of you, of whom we will you the said Jonathan Sewell, or you the said James Monk, to be one, shall make known, to cause to come before you, or any two of you, of whom we will, you the said Jonathan Sewell, or you the said James Monk, to be one, such and so many good and lawful men of his Bailiwick, as well within liberties as without, by whom the truth of the Premises may be the better known and enquired into. In testimony whereof, we have caused these our letters to be made patent, with the great seal of our said Province of Lower Canada to be hereunto affixed, and the same to be entered of Record in our Register's office, or office of Enrolments, in our said Province of Lower Canada. Witness our trusty and well beloved, SIR JOHN COAPE SHERBROOKE, Knight Grand Cross of the Most Honourable Military Order of the Bath, Captain General and Governor in Chief in and over the Province of Lower Canada. Vice Admiral of the same, &c. &c. &c. at our Castle of Saint Lewis, in our City of Quebec, in our said Province of Lower Canada, this twenty ninth day of April, in the year of our Lord one thousand eight hundred and eighteen, and in the fifty eighth of our Reign.

(Signed) J. C. S.

(Signed) JOHN TAYLOR, }  
Depy. Secy. }

## (APPENDIX. B.)

CHARGE TO THE GRAND JURY, DELIVERED BY THE CHIEF  
JUSTICE, 18th MAY, 1818.

GENTLEMEN,

THE system of criminal Jurisprudence which obtains in this Province, is more careful of the life and liberty of the subject, more provident in its dispositions to secure an impartial and careful investigation, than any other. It is not the offspring of speculative theory, the labour of the closet accommodated to the political views and designs of the Government, but the result of experience designed for the benefit of society, matured by the joint wisdom of successive legislators of all ranks and many centuries, and intimately connected with a constitution which perfectly attains the end of the civil and social union of mankind.

By the authority of His Majesty's Commissions of Oyer and Terminer, and General Goal delivery, which have just been read, You, Gentlemen, have been called to participate in the administration of this excellent system, and, by the oaths which you have taken, you are installed in an Office, highly honourable, and as extensive as it is honourable.

You are especially required to give attention to the matters which you receive in charge from the Court, and to the accusations which the Crown Officers may submit to your consideration. But it must be remembered, that these are by no means the limits of your inquiries. It is your duty to search out, if it be possible, the concealed perpetrator of felony and misdemeanor, committed within the sphere of your investigations. No wrongs, no oppressions, are beyond your authority—Whatever touches or affects the safety, the honour, or dignity, of the Crown, does violence to the rights of individuals, is forbidden by law, or is inconsistent with the public peace, is a proper object for your animadversion. No man, if culpable, is exempt from your accusing power, the very lowest, if innocent, is entitled to your protection.

This, gentlemen, is an important trust, a trust which interests equally the Sovereign and his people, and which you are to execute with prudence and deliberation, diligence, integrity, secrecy, and courage, and, having bound yourselves to this effect by an oath, originally framed in a clear and distinct view of all that is demanded of you by the Law, your oath is, in fact, the best guide to the performance of your duty, and it behoves you to hold it in faithful recollection, as much in tenderness to your own consciences, as in duty to his Majesty, and to the community at large.

You are bound by this oath diligently to enquire and make "true presentment of all the matters and things which are given to you in charge," and "to present all things truly as they come to your knowledge, according to the best of your understanding." Words so comprehensive demand no comment; it is necessary only to remark, that the true and diligent inquiry which you have promised to make, does not bind you to this extended examination and severe scrutiny, necessary upon the trial of an offender. The object of this institution is not *ultimately* the guilt, or innocence, of the accused, but to enquire, and to pronounce, whether the matter with which he stands charged, be, or be not, so circumstanced as to call for farther investigation. You are to present him for trial, if you have reasonable grounds to believe that the charge is founded in truth, to save him from this ignominy, the danger and the inquietudes of a trial, if his innocence is apparent upon the Evidence adduced in support of this indictment, or so fairly to be presumed from it, that it can not conscientiously be doubted. To do more is to protect the accused from the due course of Law, to invade the province of the petty jury, and to usurp from them the legal right of ultimate decision, to which they constitutionally, and exclusively, are entitled.— You have sworn, "not to present any man from envy, hatred or malice," by which you engage to reject the influence of every wicked motive, but, to save you from an opposite extreme, you have also sworn, "not to leave any man unrepresented for favour or affection," by which you engage to reject even

the influence of pity, compassion, and benevolence, towards delinquents of every description, to extinguish such feelings by a sense of superior duty to the general body of the public, lest they should excite in you sentiments which might induce you to favour a criminal, and which ought, therefore, studiously to be avoided, because, if you favour, *you pardon*, and in pardoning, you assume, on the other hand, a prerogative, constitutionally and exclusively, entrusted to the Crown.

With a knowledge of the frailty as well as the depravity of our natures, the oath requires you, and you have sworn to abandon, even the "hope of reward," and to discard all "fear." A covenant that your conduct, in every respect, shall be disinterested, impartial, and absolutely free from all pusillanimous apprehensions of consequences. This, with your promise to keep secret the King's evidence and counsel, your own counsel, and the counsel of your fellow jurors, constitutes the sum of your engagement.

GENTLEMEN,

We are aware the duties of a grand juror so frequently return to many gentlemen in this district as to render them in some degree irksome, but we are convinced there are none among *you* who regret the time or trouble which they require. If there was one, we would beg him to consider the high nature of the functions which he executes, their importance to himself and to his fellow subjects, and while he reflects that the corrupt performance of a grand juror's duty exonerates the guilty, punishes the innocent, and, by undervaluing the administration of Justice, greatly injures the Government of his country, we would beg him to remember, that a negligent and imperfect performance of that duty produces the same effects. The inquest by a grand jury is indeed a privilege of high and inestimable value, but the mere form of it is nothing; much of personal convenience and individual comfort must be sacrificed, if we mean to preserve an institution so pre-eminently beneficial to ourselves and to our country.

GENTLEMEN,

Upon perusal of the Sheriff's calendar, we do not perceive



that it exhibits any commitments which require particular notice at this moment, it may however happen, that in the progress of your enquiries some points of law may occur upon which you may be desirous to take the opinion of the Court, and, if this should be the case, you will find us at all times ready and desirous to afford you every assistance in the execution of your duty which it is in our power to give.

*The charge was likewise repeated in French by the Chief Justice.*

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(APPENDIX. C.)

PROVINCE OF LOWER CANADA }  
DISTRICT OF QUEBEC, TO WIT. }

At a Session of Oyer and Terminer and General Gaol Delivery of our Sovereign Lord the King of and for the District of Quebec in the Province of Lower Canada, begun and holden at the Court-House in the City of Quebec in the said District of Quebec, on Monday the eighteenth day of May, in the fifty eighth year of the Reign of our Sovereign Lord George the Third, by the Grace of God, of the United Kingdom of Great Britain and Ireland, King, defender of the Faith, before the Honourable Jonathan Sewell, Chief Justice of the said Province of Lower Canada, the Honourable Oliver Perrault, and Edward Bowen, Justices of the Court of King's Bench for the said District of Quebec in the said Province, Justices of our said Lord the King, assigned by Letters patent of our said Lord the King, under the Great Seal of the said Province, made to them the aforesaid Justices and others, or any two of them, (of whom the Honourable Jonathan Sewell, Chief Justice as aforesaid, or the Honourable James Monk, Chief Justice of the Court of King's Bench for the District of Montreal in the said Province, our said Lord the King willed to be one) to enquire, by the oaths of good and lawful men of the aforesaid District of Quebec, and by other ways, methods and means, by

which they may the better know (as well within liberties as without,) by whom the truth of the matter may be the better known and enquired into, of all Treasons, Misprisions of Treasons, Insurrections, Rebellicious, Counterfeittings, Clippings, Washings, False Coinings and other Falsities of the money of Great Britain, and other Kingdoms and Dominions whatsoever, and of all Murders, Felonies, Manslaughters, Killings, Burglaries, Rapes of Women, Unlawful Meetings, and Conventicles, unlawful uttering of Words, Assemblies, Misprisions, Confederacies, false allegations, Trespasses, Riots, Routs, Retentions, Escapes, Contempts, Falsities, Negligencies, Concealments, Maintenance, Oppressions, Champerty, Deceits, and all other evil doings, offences and injuries, whatsoever, and also the accessories of the same, within the aforesaid District of Quebec (as well within liberties as without) or committed within any of the Indian Territories, or parts of America not within the limits of either of the said Provinces of Upper or Lower Canada, or of any civil Government of the United States of America, by whomsoever, and in what manner soever, done, committed, or perpetrated, and by what person or persons, to what person or persons, when, how and after what manner, and of all other articles and circumstances concerning the premises, and every of them, or any one or more of them, in any manner whatsoever, and the said treasons and other the premises, according to the Laws and customs of England, and of the said Province of Lower Canada, for this time, to hear and determine, and the gaol of the said District of Quebec of the prisoners therein being (for this time) to deliver.

QUEBEC, TO WIT.

The Jurors for our Lord the King upon their oath present, that Charles de Reinhard, late of a certain place in the River Winepeg, not known by any name, and not comprised in any parish, or county, but situate in the Indian Territories, or parts of America not within the limits of either of the Provinces of Upper or Lower Canada, or of any civil Government of the United States of America, Labourer, Archibald, M'Lellan late of the same place, Gentleman, Joseph Cadot, late of the same place, Gentleman, Cuthbert Grant, late of the same

place, Gentleman, and Jean Baptiste Desmarais, late of the same place, Labourer, not having the fear of God before their eyes, but being moved and seduced by the instigation of the devil, on the eleventh day of September, in the fifty sixth Year of the Reign of our Sovereign Lord George the Third, by the Grace of God, of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith, with force and arms at the said place, in the River Winepeg, not comprised in any parish or county, but situated in the Indian Territories, or parts of America not within the limits of either of the Provinces of Upper or Lower Canada, or of any civil Government of the United States of America, and being within the jurisdiction of this Court, in and upon one Owen Keveny, in the peace of God and of our said Lord the King, then and there being, feloniously, wilfully, and of their malice aforethought, did make an assault, and that the said Charles de Reinhard, with a certain sword called a-sabre made of the value of five shillings. which he the said Charles de Reinhard in his right hand then and there had and held, him the said Owen Keveny, in and upon the back of him the said Owen Keveny, under the left shoulder-blade of him the said Owen Keveny, then and there, feloniously, wilfully, and of his malice aforethought, did strike, stab, thrust, and penetrate, giving unto him the said Owen Keveny, then and there, with the sabre aforesaid, in and upon the back of him the said Owen Keveny, under the left shoulder-blade of him the said Owen Keveny, two mortal wounds, each of the breadth of two inches and of the depth of six inches, of which said mortal wounds, he the said Owen Keveny, then and there instantly died, and that the said Archibald McLellan, Cuthbert Grant, Joseph Cadot and Jean Baptiste Desmarais, feloniously, wilfully and of their malice aforethought, were then and there present, aiding, helping, abetting, comforting and maintaining, the said Charles de Reinhard, the felony and murder aforesaid, in manner and form aforesaid, to do, commit, and perpetrate, and so the Jurors aforesaid, upon their oath aforesaid, do say that the said Charles de Reinhard, Archibald McLellan Cuthbert Grant, Joseph Cadot, and Jean Baptiste Desmarais, him the said Owen Keveny then and there,

within the jurisdiction aforesaid, in manner and form aforesaid, feloniously, wilfully, and of their malice aforethought, did kill and murder, against the peace of our said Lord the King, his Crown and Dignity.

2d. And the Jurors aforesaid, upon their oaths aforesaid, do further present, that the said Charles de Reinhard, Archibald McLellan, Cuthbert Grant, Joseph Cadot, and Jean Baptiste Desmarais, not having the fear of God before their eyes, but being moved and seduced by the instigation of the devil, on the said eleventh day of September, in the fifty sixth year aforesaid, with force and arms, at the said place in the river Winepeg, not comprised in any parish or county but situated in the said Indian Territories, or parts of America not within the limits of either of the Provinces of Upper or Lower Canada, or of any civil Government of the United States of America, and being within the jurisdiction of this Court, in and upon the said Owen Keveny, in the peace of God and of our said Lord the King then and there being, feloniously, wilfully, and of their malice aforethought, did make an assault, and that the said Charles de Reinhard, a certain gun of the value of five shillings, then and there charged and loaded with gunpowder and a leaden bullet, which gun he, the said Charles De Reinhard, in both his hands then and there had and held to, against, and upon, the said Owen Keveny then and there, feloniously, wilfully and of his malice aforethought, did shoot off, and discharge, and that the said Charles de Reinhard, with the leaden bullet aforesaid out of the gun aforesaid, then and there by the force of the gunpowder aforesaid, by the said Charles de Reinhard so shot off and discharged, as aforesaid, the said Owen Keveny, in and upon the neck of him the said Owen Keveny, under the left ear of him the said Owen Keveny, then and there, feloniously, wilfully, and of his malice aforethought, did strike, penetrate and wound, giving to the said Owen Keveny, then and there, with the leaden bullet aforesaid, so, as aforesaid, shot off and discharged, out of the the gun aforesaid, by the said Charles de Reinhard, in and upon the neck of him the said Owen Keveny, under the left ear of him the said Owen Keveny, one mortal wound, of the depth of five inches,

and of the breadth of one inch, of which said last mentioned mortal wound the said Owen Keveny, then and there, instantly died, and that the said Archibald McLellan, Cuthbert Grant, Joseph Cadot, and Jean Baptiste Desmarais, feloniously, wilfully, and of their malice aforethought, were then and there present, aiding, helping, abetting, comforting, and maintaining, the said Charles de Reinhard the felony and murder last aforesaid, in manner and form last aforesaid, to do, commit, and perpetrate: And so the Jurors aforesaid, upon their oath aforesaid, do say, that the said Charles de Reinhard, Archibald McLellan, Cuthbert Grant, Joseph Cadot, and Jean Baptiste Desmarais, him the said Owen Keveny, then and there within the jurisdiction aforesaid, in manner and form last aforesaid, feloniously, wilfully, and of their malice aforethought, did kill and murder, against the peace of our Lord the King, his Crown and Dignity.

And the Jurors aforesaid, upon their oath aforesaid, do further present, that the said Charles de Reinhard, Archibald McLellan, Cuthbert Grant, Joseph Cadot; and Jean Baptiste Desmarais, not having the fear of God before their eyes, but being moved and seduced by the instigation of the devil, on the said eleventh day of September, in the fifty sixth year aforesaid, with force and arms, at the said place in the River Winepeg, not comprised in any parish or county, but situated in the said Indian Territories, or parts of America not within the limits of either of the Provinces of Upper or Lower Canada, or of any civil Government of the United States of America, and being within the jurisdiction of this Court, in and upon the said Owen Keveny, in the peace of God and of our said Lord the King, then and there being, feloniously, wilfully, and of their malice aforethought, did make an assault, and that the said Charles de Reinhard, a certain other gun, of the value of five shillings, then and there charged and loaded with gunpowder and a leaden bullet, which said last mentioned gun he the said Charles de Reinhard in both his hands then and there had and held, to, against, and upon, the said Owen Keveny, then and there, feloniously, wilfully, and of his malice aforethought, did shoot off and discharge, and that the said Charles de Reinhard with

the leaden bullet last aforesaid, out of the gun last aforesaid, then and there by force of the gunpowder last aforesaid, by the said Charles de Reinhard shot off and discharged, as last aforesaid, the aforesaid Owen Keveny, in and upon the neck of him the said Owen Keveny, under the left ear of him the said Owen Keveny, then and there, feloniously, wilfully, and of his malice aforethought, did strike, penetrate, and wound, giving to the said Owen Keveny, then and there, with the leaden bullet last aforesaid, so as aforesaid shot off and discharged out of the gun last aforesaid by the said Charles de Reinhard, in and upon the neck of the said Owen Keveny, under the left ear of him the said Owen Keveny, one mortal wound of the depth of five inches, and of the breadth of one inch, and that the said Charles de Reinhard also, with a certain other sword, called a sabre, made of iron and steel, of the value of five shillings, which he the said Charles de Reinhard in his right hand then and there had and held, him the said Owen Keveny, in and upon the back of him the said Owen Keveny, under the left shoulder-blade of him the said Owen Keveny, then and there, feloniously, wilfully, and of his malice aforethought, did strike, stab, thrust, and penetrate, giving unto him the said Owen Keveny, then and there, with the sabre last aforesaid, in and upon the back of him the said Owen Keveny, under the left shoulder-blade of him the said Owen Keveny, two mortal wounds, each of the breadth of two inches and of the depth of six inches, as well of which said mortal wound, so as aforesaid given by the said Charles de Reinhard to the said Owen Keveny with the leaden bullet last aforesaid in and upon the neck of him the said Owen Keveny, under the left ear of the said Owen Keveny, as of the said mortal wounds so as aforesaid given by the said Charles de Reinhard to the said Owen Keveny with the sabre last aforesaid, in and upon the back of him the said Owen Keveny, under the left shoulder-blade of him the said Owen Keveny as last aforesaid, he the said Owen Keveny, then and there, instantly died, and that the said Archibald McLellan, Cuthbert Grant, Joseph Cadot, and Jean Baptiste Desmarais, feloniously, wilfully, and of their malice aforethought, were then and there present, aiding, helping, abetting, comfort-

ing and maintaining, the said Charles de Reinhard the felony and murder last aforesaid in manner and form last aforesaid to do, commit, and perpetrate : and so, the Jurors aforesaid, upon their oath aforesaid, do say, that the said Charles de Reinhard, Archibald M'Lellan, Cuthbert Grant, Joseph Cadot, and Jean Baptiste Desmarais, him the said Owen Keveny, then and there, within the jurisdiction aforesaid, in manner and form last aforesaid, feloniously, wilfully, and of their malice aforethought, did kill and murder, against the peace of our said Lord the King, his Crown and Dignity.

And the Jurors aforesaid, upon their oath aforesaid, do further present, that one François Mainville, late of the said place, in the River Winepeg, Labourer, and the said Charles de Reinhard, Archibald M'Lellan, Cuthbert Grant, Joseph Cadot and Jean Baptiste Desmarais, not having the fear of God before their eyes, but being moved and seduced by the instigation of the devil, on the said eleventh day of September, in the fifty sixth year aforesaid, with force and arms, at the said place in the River Winepeg, not comprised in any parish or county, but situated in the said Indian Territories or parts of America not within the limits of either of the Provinces of Upper or Lower Canada, or of any civil Government of the United States of America, and being within the jurisdiction of this Court, in and upon the said Owen Keveny, in the peace of God and of our said Lord the King, then and there being, feloniously, wilfully, and of their malice aforethought, did make an assault, and that the said François Mainville a certain other gun, of the value of five shillings, then and there, charged and loaded with gunpowder and a leaden bullet, which said last mentioned gun the said François Mainville in both his hands then and there had and held to, against, and upon, the said Owen Keveny, then and there, feloniously, wilfully, and of his malice aforethought, did shoot off and discharge, and that the said François Mainville with the leaden bullet last aforesaid, out of the gun last aforesaid, then and there, by the force of the gunpowder last aforesaid by the said François Mainville so shot off and discharged, as last aforesaid, the said Owen Keveny, in and upon the neck of him the said Owen Keveny, under the left

ear of him the said Owen Keveny, then and there, feloniously, wilfully, and of his malice aforethought, did strike, penetrate, and wound, giving to the said Owen Keveny, then and there, with the leaden bullet last aforesaid, so as aforesaid, shot off and discharged out of the gun last aforesaid, by the said François Mainville, in and upon the neck of him the said Owen Keveny, under the left ear of him the said Owen Keveny, one mortal wound of the depth of five inches, and of the breadth of one inch, of which said last mentioned mortal wound, the said Owen Keveny, then and there, instantly died, and that the said Charles de Reinhard, Archibald M'Lellan, Cuthbert Grant, Joseph Cadot, and Jean Baptiste Desmarais, feloniously, wilfully, and of their malice aforethought, were then and there, present, aiding, helping, abetting, comforting, and maintaining, the said François Mainville the felony and murder last aforesaid in manner and form last aforesaid to do, commit and perpetrate : and so the Jurors aforesaid, upon their oath aforesaid, do say, that the said François Mainville, Charles de Reinhard, Archibald M'Lellan, Cuthbert Grant, Joseph Cadot, and Jean Baptiste Desmarais, him the said Owen Keveny, then and there, within the jurisdiction aforesaid, in manner and form last aforesaid, feloniously, wilfully, and of their malice aforethought, did kill and murder, against the peace of our said Lord the King, his Crown and Dignity.

And the Jurors aforesaid, upon their oath aforesaid, do further present, that the said Charles de Reinhard, not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, on the said eleventh day of September, in the fifty sixth year aforesaid, with force and arms, at the said place in the River Winepeg, not comprised in any parish or county, but situated in the said Indian Territories, or parts of America not within the limits of either of the Provinces of Upper or Lower Canada, or of any civil government of the United States of America, and being within the jurisdiction of this Court, in and upon the said Owen Keveny, in the peace of God and of our Lord the King, then and there being, feloniously, wilfully and of his malice aforethought, did make an assault, and that the said Charles de Reinhard with a certain other



sword or sabre made of iron and steel of the value of five shillings, which he the said Charles de Reinhard in his right hand then and there had and held, him the said Owen Keveny, in and upon the back of him the said Owen Keveny, under the left shoulder-blade of him the said Owen Keveny, then and there feloniously, wilfully, and of his malice aforethought, did strike, stab, thrust and penetrate, giving unto him the said Owen Keveny, then and there, with the sabre last aforesaid, in and upon the back of him the said Owen Keveny, under the left shoulder-blade of him the said Owen Keveny, two mortal wounds, each of the breadth of two inches and of the depth of six inches, of which said last mentioned mortal wounds he the said Owen Keveny, then and there, instantly died; and so the jurors aforesaid, upon their oath aforesaid, do say that the said Charles de Reinhard, him the said Owen Keveny, then and there, within the jurisdiction aforesaid, in manner and form last aforesaid, feloniously, wilfully, and of his malice aforethought, did kill and murder, against the peace of our Lord the King His Crown and Dignity, and that the said Archibald M'Lellan, Cuthbert Grant, Joseph Cadot, and Jean Baptiste Desmarais, before the felony and murder last aforesaid by the said Charles de Reinhard, in manner and form last aforesaid, done and committed, to wit, on the said eleventh day of September, in the fifty sixth year aforesaid, with force and arms at the said place in the River Winepeg, not comprised in any parish or county, but situated in the said Indian Territories, or parts of America not within the limits of either of the Provinces of Upper or Lower Canada, or of any civil government of the United States of America, and being within the jurisdiction of this Court, did feloniously, wilfully, and of their malice aforethought, incite, move, procure, counsel, stir up, and abet, the said Charles de Reinhard to do and commit the felony and murder last aforesaid, against the peace of our said Lord the King, his Crown and Dignity: and that after the felony and murder last aforesaid by the said Charles de Reinhard, in manner and form last aforesaid, done and committed, the said Archibald M'Lellan, Cuthbert Grant, Joseph Cadot, and Jean

Baptiste Desmarais, well knowing the said Charles de Reinhard to have done and committed the felony and murder last aforesaid, in manner and form last aforesaid, on the said eleventh day of September, in the fifty sixth year aforesaid, with force and arms at the said place in the river Winnipeg, not comprised in any parish or county, but situated in the said Indian Territories, or parts of America not within the limits of either of the Provinces of Upper or Lower-Canada, or of any civil government of the United States of America, and being within the jurisdiction of this Court, him, the said Charles de Reinhard, did wilfully, and feloniously, receive, harbour, and maintain, against the peace of our Lord the King, his Crown and Dignity.

And the jurors aforesaid, upon their oath aforesaid, do further present that the said Charles de Reinhard, not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, on the said eleventh day of September, in the fifty sixth year aforesaid, with force and arms, at the said place in the river Winnipeg, not comprised in any parish or county, but situated in the Indian Territories or parts of America not within the limits of either of the Provinces of Upper or Lower Canada, or of any civil Government of the United States of America, and being within the jurisdiction of this Court, in and upon the said Owen Keveny, in the peace of God and of our said Lord the King then and there being, feloniously, wilfully, and of his malice aforethought, did make an assault; and that the said Charles de Reinhard, a certain other gun of the value of five shillings, then and there charged and loaded with gunpowder and a leaden bullet, which gun he the said Charles de Reinhard in both his hands then and there had and held to, against, and upon, the said Owen Keveny, then and there feloniously, wilfully, and of his malice aforethought, did shoot off and discharge, and that the said Charles de Reinhard with the leaden bullet last aforesaid, out of the gun last aforesaid then and there by force of the gunpowder last aforesaid by the said Charles de Reinhard so shot off and discharged as last aforesaid, the said Owen Keveny, in and upon the neck of

him the said Owen Keveny, under the left ear of him the said Owen Keveny, then and there, feloniously, wilfully, and of his malice aforethought, did strike, penetrate, and wound, giving to the said Owen Keveny, then and there with the leaden bullet last aforesaid, so as last aforesaid shot off and discharged out of the gun last aforesaid by the said Charles de Reinhard, in and upon the neck of him the said Owen Keveny, under the left ear of him the said Owen Keveny, one mortal wound of the depth of five inches, and of the breadth of one inch, of which said last mentioned mortal wound the said Owen Keveny then and there instantly died. And so the jurors aforesaid, upon their oath aforesaid, do say that the said Charles de Reinhard, him the said Owen Keveny, then and there, within the jurisdiction aforesaid, in manner and form last aforesaid, feloniously, wilfully and of his malice aforethought, did kill and murder, against the peace of our said Lord the King his Crown and Dignity. And that the said Archibald M'Lellan, Cuthbert Grant, Joseph Cadot, and Jean Baptiste Desmarais, before the felony and murder last aforesaid by the said Charles de Reinhard, in manner and form last aforesaid, done and committed, to wit, on the said eleventh day of September in the fifty sixth year aforesaid, with force and arms, at the said place in the river Winepeg, not comprised in any parish or county, but situated in the said Indian Territories or parts of America not within the limits of either of the Provinces of Upper or Lower Canada, or of any civil government of the United States of America, and being within the jurisdiction of this Court, did feloniously, wilfully, and of their malice aforethought, incite, move, procure, counsel, stir up, and abet, the said Charles de Reinhard to do and commit the said last mentioned felony and murder, in manner and form aforesaid, against the peace of our said Lord the King, his Crown and Dignity. And that after the felony and murder last aforesaid by the said Charles de Reinhard, in manner and form last aforesaid, done and committed, the said Archibald M'Lellan, Cuthbert Grant, Joseph Cadot, and Jean Baptiste Desmarais, well knowing the said Charles de Reinhard to have done and committed the said felony and murder last afore-

said, in manner and form last aforesaid, on the said eleventh day of September, in the fifty sixth year aforesaid, with force and arms, at the said place in the river Winepeg, not comprised in any parish or county, but situated in the said Indian Territories or parts of America not within the limits of either of the Provinces of Upper or Lower Canada, or of any civil government of the United States of America, and being within the jurisdiction of this Court, him the said Charles de Reinhard did wilfully, and feloniously, receive, harbour, and maintain, against the peace of our said Lord the King, his Crown and Dignity.

And the jurors aforesaid, upon their oath aforesaid; do further present, that the said Charles de Reinhard, not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, on the said eleventh day of September, in the fifty sixth year aforesaid, with force and arms, at the said place in the river Winepeg, not comprised in any parish or county, but situated in the Indian Territories, or parts of America not within the limits of either of the Provinces of Upper or Lower Canada, or of any civil government of the United States of America, and being within the jurisdiction of this Court, in and upon the said Owen Keveny in the peace of God and of our said Lord the King then and there being, feloniously, wilfully, and of his malice aforethought, did make an assault; and that the said Charles de Reinhard, a certain other gun of the value of five shillings then and there charged and loaded with gunpowder and a leaden bullet; which said last mentiond gun he the said Charles de Reinhard in both his hands then and there had and held to, against, and upon, the said Owen Keveny, then and there feloniously, wilfully, and of his malice aforethought, did shoot off and discharge, and that the said Charles de Reinhard with the leaden bullet last aforesaid, out of the gun last aforesaid, then and there, by force of the gunpowder last aforesaid, by the said Charles de Reinhard shot off and discharged, as last aforesaid, the said Owen Keveny, in and upon the neck of him the said Owen Keveny, under the left ear of him the said Owen Keveny, then and there, feloniously, wilfully, and of his malice a-

forethought, did strike, penetrate, and wound, giving to the said Owen Keveny, then and there, with the leaden bullet last aforesaid, so as aforesaid shot off and discharged out of the gun last aforesaid by the said Charles de Reinhard in and upon the neck of him the said Owen Keveny, under the left ear of him the said Owen Keveny, one mortal wound of the depth of five inches and of the breadth of one inch, and that the said Charles de Reinhard also with a certain other sword called a sabre made of iron and steel of the value of five shillings, which he the said Charles de Reinhard in his right hand then and there had and held, him the said Owen Keveny, in and upon the back of him the said Owen Keveny, under the left shoulder-blade of him the said Owen Keveny then and there feloniously, wilfully, and of his malice aforethought, did strike, stab, thrust, and penetrate, giving unto him the said Owen Keveny, then and there, with the sabre last aforesaid, in and upon the back of him the said Owen Keveny two mortal wounds, each of the breadth of two inches and of the depth of six inches as well of which said mortal wounds so as aforesaid given by the said Charles de Reinhard to the said Owen Keveny with the leaden bullet last aforesaid in and upon the neck of the said Owen Keveny under the left ear of him the said Owen Keveny, as of the said mortal wounds so as aforesaid given by the said Charles de Reinhard to the said Owen Keveny, with the sabre aforesaid, in and upon the back of him the said Owen Keveny, under the left shoulder-blade of him the said Owen Keveny as last aforesaid, he the said Owen Keveny then and there instantly died. And so the jurors aforesaid, upon their oath aforesaid, do say, that the said Charles de Reinhard, him the said Owen Keveny, then and there, within the jurisdiction aforesaid, in manner and form last aforesaid, feloniously, wilfully, and of his malice aforethought, did kill and murder against the peace of our said Lord the King, his Crown and Dignity; and that the said Archibald M'Lellan, Cuthbert Grant, Joseph Cadot, and Jean Baptiste Desmarais, before the felony and murder last aforesaid, by the said Charles de Reinhard, in manner and form last aforesaid, done and committed, to wit, on the said eleventh day of Sep-

tember, in the fifty sixth year aforesaid, with force and arms, at the said place in the river Winepeg, not comprised in any parish or county, but situated in the said Indian Territories or parts of America, not within the limits of either of the Provinces of Upper or Lower Canada, or of any civil government of the United States of America, and being within the jurisdiction of this Court, did feloniously, wilfully, and of their malice aforethought, incite, move, procure, counsel, stir up, and abet, the said Charles de Reinhard to do and commit the said last mentioned felony and murder, in manner and form aforesaid, against the peace of our said Lord the King, his Crown and Dignity—and that, after the felony and murder last aforesaid by the said Charles de Reinhard in manner and form last aforesaid, done and committed, the said Archibald M'Lellan, Cuthbert Grant, Joseph Cadot, and Jean Baptiste Desmarais, well knowing the said Charles de Reinhard to have done and committed the felony and murder last aforesaid, in manner and form last aforesaid, on the said eleventh day of September, in the fifty sixth year aforesaid, with force and arms, at the said place in the river Winepeg, not comprised in any parish or county, but situated in the Indian Territories, or parts of America not within the limits of either of the Provinces of Upper or Lower Canada, or of any civil government of the United States of America, and being within the jurisdiction of this Court, him the said Charles de Reinhard did wilfully, and feloniously, receive, harbour, and maintain, against the peace of our said Lord the King, his Crown and Dignity.

And the jurors aforesaid, upon their oath aforesaid, do further the present, that the said François Mainville and Charles de Reinhard, not having the fear of God before their eyes, but being moved and seduced by the instigation of the devil, on the said eleventh day of September, in the fifty sixth year aforesaid, with force and arms, at the said place in the river Winepeg, not comprised in any parish or county, but situated in the Indian Territories, or parts of America not within the limits of either of the Provinces of Upper or Lower Canada,

or of any civil government of the United States of America, and being within the jurisdiction of this Court, in and upon the said Owen Keveny, in the peace of God and of our said Lord the King, then and there being, feloniously, wilfully, and of their malice aforethought, did make an assault; and that the said François Mainville a certain other gun of the value of five shillings, then and there charged and loaded with gunpowder and a leaden bullet, which gun he the said François Mainville in both his hands then and there had and held to, against, and upon, the said Owen Keveny, then and there, feloniously, wilfully, and of his malice aforethought, did shoot off and discharge, and that the said François Mainville with the leaden bullet last aforesaid, out of the gun last aforesaid, then and there by force of the gunpowder last aforesaid by the said François Mainville so shot off and discharged as last aforesaid, the said Owen Keveny, in and upon the neck of him the said Owen Keveny, under the left ear of him the said Owen Keveny, then and there, feloniously, wilfully, and of his malice aforethought, did strike, penetrate and wound, giving to the said Owen Keveny, then and there, with the leaden bullet last aforesaid, so as aforesaid shot off and discharged out of the gun last aforesaid by the said François Mainville, in and upon the neck of him the said Owen Keveny, under the left ear of him the said Owen Keveny, one mortal wound of the depth of five inches and of the breadth of one inch, of which this said last mentioned mortal wound he the said Owen Keveny then and there instantly died: And that the said Charles de Reinhard, feloniously, wilfully, and of his malice aforethought, was then and there present, aiding, helping, abetting, assisting, comforting, and maintaining, the said François Mainville, the felony and murder last aforesaid in manner and form last aforesaid to do, commit and perpetrate: And so the jurors aforesaid, upon their oath aforesaid, do say that the said François Mainville and Charles de Reinhard, him the said Owen Keveny then and there within the jurisdiction aforesaid, feloniously, wilfully, and of their malice aforethought, did kill and murder, against the peace of our said Lord the King, his Crown and Dignity.—

And that the said Archibald M'Lellan, Cuthbert Grant, Joseph Cadot, and Jean Baptiste Desmarais, before the felony and murder last aforesaid by the said François Mainville and Charles de Reinhard, in manner and form last aforesaid, done and committed, to wit, on the said eleventh day of September, in the fifty sixth year aforesaid, with force and arms, at the said place in the river Winepeg, not comprised in any parish or county, but situated in the said Indian Territories, or parts of America not within the limits of either of the Provinces of Upper or Lower Canada, or of any civil government of the United States of America, and being within the jurisdiction of this Court, did feloniously, wilfully and of their malice aforethought, incite, move, procure, counsel, stir up, and abet, the said François Mainville and Charles de Reinhard to do and commit the said last mentioned felony and murder in manner and form aforesaid, against the peace of our said Lord the King, his Crown, and Dignity. And that after the felony and murder last aforesaid, by the said François Mainville and Charles de Reinhard in manner and form last aforesaid done and committed, the said Archibald M'Lellan, Cuthbert Grant, Joseph Cadot, and Jean Baptiste Desmarais, well knowing the said François Mainville, and Charles de Reinhard to have done and committed the felony and murder last aforesaid, on the said eleventh day of September, in the fifty sixth year aforesaid, with force and arms, at the said place in the river Winepeg, not comprised in any parish or county, but situated in the said Indian Territories, or parts of America, not within the limits of either of the Provinces of Upper or Lower Canada, or of any civil government of the United States of America, and being within the jurisdiction of this court, them the said François Mainville and Charles de Reinhard did wilfully, and feloniously, receive, harbour, and maintain, against the peace of our said Lord the King, his Crown and Dignity.



## (APPENDIX. D.)

*Déclaration et Confession de Charles De Reinhard.*

MOI, soussigné, Charles De Reinhard, m'étant rendu prisonnier à Capitaine D'Orsonnens au Lac la Pluie, le 2 d'Octobre, 1816, en conséquence de différentes circonstances arrivées depuis le tems de mon service dans la Compagnie du Nord-Ouest, et pour ce qui a rapport à la mort de Mr. O. Keveney, fais volontairement la déclaration suivante :—

Ayant fini mon tems de service comme Garde Drapeau dans le Régiment De Meuron, j'ai été recommandé par Mr. le Lieutenant de Mesani, commandant de ma Compagnie, à Messieurs W. M'Gillivray et M'Leod, pour être commis dans la Compagnie du Nord-Ouest, et j'ai obtenu ensuite mon congé du Régiment le 24 Avril, 1816, par recommandation particulière faite à son Excellence le Gouverneur Sir Gordon Drummond.

Je me suis engagé avec la plus haute opinion que j'ai reçue de Mr. Mesani pour servir avec tout le zèle possible une société la plus honorable, et protégée par le Gouvernement, et j'ai été très satisfait de partir pour le Nord en compagnie de Messieurs les Lieutenants Mesani et Brumby, qui avoient permission d'absence du régiment pour six mois, sur la demande de la Compagnie du Nord-Ouest, pour rendre un compte impartial au Gouvernement de tout ce qui se passeroit dans ce pays.

Durant le voyage, j'ai entendu parler plusieurs fois d'une opposition, sans comprendre où et comme elle étoit, jusqu'à ce que nous sommes arrivés au Lac la Pluie, où Mr. Mesani m'informa, comme Mr. M'Leod souhaitoit, que je misse mon habit militaire, ainsi que mon camarade Heurtre, Messieurs M'Gillivray, M'Leod et Mesani nous ayant recommandé de les prendre avant le départ de Montréal, pour paroître dans un Conseil des Sauvages, qui eut lieu dans la chambre d'audience où Messieurs Mesani et Brumby ont été introduits comme Capitaines, moi et Heurtre à leur côté comme gens du Roi. Mr. M'Leod dirigeoit le discours pour l'interprète, et-faisoit expliquer aux Sauvages, ce qui s'étoit passé à la Rivière Rouge, où Mr. Robertson avoit

pris le fort comme un voleur, les prisonniers maltraités, et après le pillage tout brûlé, et ce qu'on avoit à craindre d'autres violences : en conséquence le Gouvernement avoit envoyé Messieurs les Officiers, pour voir que justice fût rendue, et Mr. M'Leod invita les Sauvages de prendre parti avec la Compagnie du Nord-Ouest, et de leur donner assistance pour défendre leur droit ; sur quoi un chef des Sauvages et vingt-quatre de ses jeunes gens, après avoir reçu des présents et ammunition, sont partis le lendemain avec la brigade, la moitié dans leurs propres canots, et la moitié dans ceux de la brigade.

Arrivés au fort Bas de la Rivière, Mr. M'Leod fit ouvrir les caisses d'armes, et armer les Canadiens ; on embarqua deux pièces de canons de métal, et la brigade monta jusqu'à la Rivière des Morts, pour y attendre encore des canots d'Athabasca, qui sont arrivés le lendemain. Le 22 Juin, la brigade est avancée dans la Rivière des Morts, et rencontra deux barges de colons, dont Mr. M'Leod visita toutes les cassettes, coffres, &c. et garda beaucoup de papiers ; il ne fit prisonnier que Mr. Pritchard, de qui les premiers détails des événemens qui ont eu lieu, à la Rivière Rouge, furent obtenus. Ayant retrogacé jusqu'au campement précédent avec les colons, Mr. Bourke qui étoit blessé, et trois autres serviteurs de la Compagnie de la Baye d'Hudson, ont été faits prisonniers, et mis tous ensemble dans une tente, dont j'avois la surveillance.

Le lendemain Mr. M'Leod et les autres propriétaires présens, avec plusieurs commis, sont partis en canots allèges pour la Fourche, ainsi que Messieurs Mesani et Brumby, qui aussitôt après leur retour et celui des autres Messieurs de la Rivière des Morts, sont partis avec Mr. Hughes pour Fort William, pour apporter les nouvelles à Mr. Wm. M'Gillivray, et de là se rendre à Montréal immédiatement. Après que la brigade fut rassemblée, on m'envoya avec les prisonniers au Bas de la Rivière, et la brigade se rendit au Grand Rapide, craignant que Mr. Robertson n'interceptât les canots chargés d'Athabasca, et Messieurs M'Donell et M'Lellan sont arrivés quatre ou cinq jours après moi, au Bas de la Rivière, avec quinze Bois-Brûlés, trois canons, dont deux petits de métal, et un de fer, deux fusils de

rempart, et environ cinquante fusils—mousquets—de l'ancien modèle de l'armée.—Au retour de la brigade du Grand Rapide les prisonniers ont été embarqués pour Fort William, et j'ai reçu la direction sous le commandement de Mr. M'Lellan de mettre le fort en état de défense, tant contre Mr. Robertson, qui a été supposé vouloir prendre ce poste de provision, où il y avoit quatre ou cinq cent sacs de pémican, qu'à recevoir avec les canons et quarante fusils en réserve toujours chargés, chaque canot de la Compagnie de la Baye d'Hudson qui tenteroit de passer stet poste.

Ayant appris, que le Milord Selkirk étoit arrivé au Sault avec grand nombre d'hommes, canons, &c. on redoubla de vigilance au Fort, M'Lellan faisant croire à tout le monde, que le Milord étoit leur plus grand ennemi, avilissant son caractère de toute manière,—et représentant le pamphlet de Mr. Strahan comme parlant de Milord avec trop de modération, publiant l'opinion de trois avocats pour prouver la nullité de la chartre, et représentant Lord Selkirk comme agissant sans autorité et faisant des loix à sa façon ;—que le Gouvernement étoit décidément en faveur de la Compagnie du Nord-Ouest, puisqu'il avoit envoyé deux officiers, pour voir que tout étoit en règle :—que tout ce que fait Lord Selkirk est sans la connaissance, ou l'agrément du Gouvernement.

Dans le commencement d'Août on a appris au Bas de la Rivière, qu'il étoit arrivé dans le lac du Bonnet une barge d'Anglois de la Baye d'Hudson avec peu de monde. Par les premiers canots chargés pour Athabasca il arriva un homme de cette barge, qui dit, qu'il ne pouvoit plus rester avec Mr. Keveny qui commande cette barge, et que ses camarades échapperoient aussi à la première occassion.—Quelques jours après quatre autres hommes de cette barge sont arrivés avec d'autres canots pour Athabasca. Deux ou trois jours après Mr. M'Leod étant arrivé du Fort William examina les hommes, dont un nommé Hay a fait serment, que Mr. Keveny avoit cruellement maltraité lui et ses camarades ; sur cela Mr. M'Leod donna un warrant contre lui, et nomma moi, et un de ses propres hommes nommé Castalo, comme connétables pour aller l'arrêter au portage, où ses gens l'avoient abandonné. Mr. M'Lellan or-

donna six Bois-Brulés avec moi pour assistance ; en arrivant sur les dix heures du matin, j'ai trouvé Mr. Keveny dans sa tente, et je lui ai annoncé ma mission, le faisant prisonnier au nom du Roi ; il fut très surpris, il saisit ses pistolets pour se défendre. — Lui ayant représenté que son opposition à la loi seroit une cause inévitable de sa mort immédiate, il resta tranquille et demanda à voir le warrant par lequel il étoit arrêté. — L'ayant lu, il vint de nouveau furieux, et j'avois beaucoup de peine à empêcher les Bois-Brulés de le tuer. Mr. Keveny fut emmené prisonnier au Bas de la Rivière, j'ai laissé l'interprète Primeau pour avoir soin de ses propriétés déjà sous la charge de son commis, nommé Cowly, et son domestique, un Irlandais. Arrivés au Fort avec le prisonnier, il eut une vive dispute avec M'Lellan, prétendant ne point être sous la juridiction du Canada, étant sur le territoire de la Compagnie de la Baye d'Hudson, il prétendoit être indépendant de la loi du Canada. Le lendemain vers les dix heures, il fut embarqué pour Fort William avec cinq Bois-Brulés, à qui Mr. M'Lellan remit des fers pour en faire usage en cas que le prisonnier fit résistance. J'ai ensuite appris des Bois-Brulés, qu'arrivé au portage, le prisonnier se conduisit de manière à les obliger de le garrotter, et lui mettre les fers aux mains. Le commis de Mr. Keveny, (Cowly) étant abandonné, se rendit au Fort, demanda à Mr. M'Lellan de recevoir contre un reçu la barge avec la charge, et de lui accorder la liberté, et encore un homme pour retourner avec un petit canot au Fort Albany, d'où ils étoient venus. Le reçu a été délivré pour quatre veaux, une alembique, une caisse d'armes, des quarts de bœufs salés, farine, &c. &c. Au retour de Primeau au fort il délivra des papiers de Mr. Keveny à Mr. M'Lellan, et il garda pour lui les habillemens qu'il (Mr. Keveny,) avoit laissés en partant pour Fort William ; il fit en outre présent à Mr. M'Lellan de livre, flacon à vin, chandeliers, tasses, et autres petits articles.

Parmi les papiers il y avoit des instructions imprimées d'Hudson's Bay. J'ai appris que Mr. M'Donell ayant rencontré le prisonnier et les cinq Bois-Brulés, remplaça les cinq Bois-Brulés, par deux jeunes Canadiens, et un Sauvage comme gui-

de pour conduire le prisonnier au Lac la Pluie. Messieurs Stuart et Thompson ayant rencontré, trois ou quatre jours après, ce canot, le firent retourner. Les Canadiens et le Sauvage s'étant disputés, ils se séparèrent, et les Canadiens, ignorant le chemin, n'ont plus pu suivre leur route, ont abandonné le prisonnier dans une petite isle, et sont restés dans une autre isle pas loin de lui. Mr. Stuart étant arrivé au Bas de la Rivière avec la nouvelle que Fort William étoit pris, M'Lellan l'envoya avec un canot aller à Athabasca, pour avertir Mr. M'Lead, et un autre à la Rivière Rouge, pour avertir Mr. M'Donell, qui arriva au Bas de la Rivière, le 4 de Septembre, dans la nuit, avec les Bois-Brûlés et des Sauvages. Pendant tout ce tems on attendoit Mr. Keveny, qui n'arrivoit point, et on conjecturoit ou que le Sauvage l'avoit tué, ou que les Canadiens s'étoient égarés, ou que le canot avoit fait naufrage. Le 5 de Septembre, Mr. M'Donell et M'Lellan ont assemblé tout le monde au Bas de la Rivière pour un conseil ; on représenta dans une proclamation la prise du Fort William, et les dangers qu'on courroit en permettant à l'ennemi de pénétrer plus avant, et demanda, ceux qui voudroient se rendre volontairement au Lac la Pluie, de s'annoncer. La plupart ayant refusé et préféré défendre leurs terres à la Rivière Rouge, Mr. M'Lellan a pris un canot allégé avec Mr. Grant, Cadet, et moi, ses Bois-Brûlés, et son domestique, un Canadien, dans l'intention de se rendre au Lac la Pluie pour apprendre des nouvelles, et en même tems chercher à découvrir ce qu'étoit devenu Mr. Keveny. Pendant le voyage la conversation générale étoit que si on le trouvoit, il falloit le tuer, étant un ennemi déterminé de la Compagnie, et qu'il pourroit faire beaucoup de dommage à la Rivière Rouge, si dans le tems il auroit occasion de prendre vengeance. Après quatre jours de marche, le Sauvage s'est trouvé près d'une petite rivière, quelques heures après on aperçut les Canadiens, auxquels M'Lellan administroit beaucoup d'invectives, et plusieurs coups de perches, pour avoir battu le Sauvage et abandonné le prisonnier. Les Bois-Brûlés ont insulté les Canadiens pour avoir empêché le Sauvage de tuer le prisonnier, qui, disoient-ils, auroit dû être mis à mort au moment qu'il fut pris. Mr. M'Lel-

lan s'étant informé, où il pourroit trouver le prisonnier, il prit les Canadiens dans le canot, le Sauvage y étant déjà, recouvert d'un manteau Ecossais, afin de n'être pas reconnu. Mr. M'Lellan en fut furieux en arrivant à l'isle où le prisonnier avoit été abandonné, sans le trouver, croyant qu'il s'étoit échappé du côté de la Baye d'Hudson, et chercha chez tous les Sauvages, jusqu'à ce qu'il le trouva par sa tente, qui étoit près d'une famille de Sauvages, à qui M'Lellan fit présent de rum et tabac, et traita un petit canot pour faire embarquer le prisonnier avec moi et un Bois-Brulé, et le Sauvage, disant à moi, " faites croire au prisonnier qu'il doit descendre au Lac la Pluie. " Nous ne pouvons pas le tuer ici parmi les Sauvages. Nous vous attendrons plus loin, et quand vous trouverez un endroit favorable, vous savez ce que vous avez à faire."—Sur quoi il partit. Environ trois quarts d'heures après que les femmes Sauvages eurent fini de gommer le petit canot, j'ai fait embarquer le prisonnier avec tout son baggage, à l'exception d'une valise et un portemanteau qui furent mis dans le canot de Mr. M'Lellan, et environ un quart de lieue de là la rivière faisant un coude et Mr. Keveny ayant demandé de mettre pied à terre pour ses besoins, j'ai dit à Mainville, (le Bois-Brulé.) " nous sommes assez loin des Sauvages, tu peux tirer quand il sera proche pour se rembarquer," le Sauvage tenoit le canot pardevant, et moi j'étois aussi à terre. Quand Mr. Keveny approcha pour s'embarquer, Mainville lui lacha son coup de fusil, dont le contenu lui traversa le cou, et comme j'ai vu que le coup n'étoit pas assez mortel, et que Mr. Keveny vouloit encore parler, étant tombé en avant sur le canot, je lui ai passé mon sabre par derrière le dos contre le cœur à deux reprises afin de terminer ses souffrances. Etant bien mort, ils dépouillèrent le cadavre, et le portèrent dans le bois. M'étant rendu au camp de Mr. M'Lellan, qui, en voyant arriver le petit canot, il envoya Mr. Grant et Cadot, pour me demander si Mr. Keveny étoit tué. Ayant répondu qu'*oui*, ils m'informèrent que Mr. M'Lellan les avoit envoyés pour me donner la direction de dire qu'il n'est pas tué, sur quoi je leur dis, qu'il est tué, et que je ne le cacherois pas, puisqu'il étoit exécuté par ses ordres. Arrivés au camp,

M'Lellan a demandé les détails du meurtre, que je lui ai donné, comme ci-dessus, et je lui ai remis sa tente, son lit, et tout le bagage; il examina tous les papiers pendant la nuit, brûlant les uns et gardant les autres, et le reste il remit à ma discrétion : j'ai distribué entre les Bois-Brulés quelques habillements portés. Mr. Grant demanderent la tente, et Mr. Cadot différentes articles, et je comptois de garder un coffre avec des habillements fins, pour ma part, mais tous fut laissé en cache pour le retour du Lac la Pluie. Nous arrivâmes le 13 Septembre au soir, au Fort Lac la Pluie, où trouvant que le fort n'étant pas occupé par le parti de Lord Selkirk, Mr. M'Lellan proposa de se rendre au Fort William pour obtenir des intelligences, ce qui ayant été refusé par les Bois-Brulés, il me proposa d'y descendre dans un petit canot avec deux ou trois Canadiens, mais Mr. Dease ayant sa famille au fort, demanda et obtint d'y aller à ma place. Mr. M'Lellan partit pour le Bas de la Rivière, le dix-sept, et moi j'étois pour rester au Lac la Pluie jusqu'au retour de Mr. Dease; le 2 Octobre de grand matin j'ai reçu une lettre du Capitaine D'Orsonnens, qui avoit appris par les Sauvages, que j'étois là; il m'avertissoit de ne pas fuir de l'endroit, qu'il avoit absolument à me parler concernant les affaires de la Rivière Rouge, m'envoyant en même tems une copie de la proclamation du Gouvernement. Capitaine D'Orsonnens étant arrivé sur les deux heures avec Mr. Dease, et m'ayant expliqué les circonstances des deux Compagnies, et que ceux du Nord-Ouest, qui étoit à la Rivière Rouge seroit considéré comme rebelles au Gouvernement s'il persistoit dans leur conduite, je fus des plus surpris de cette nouvelle, et surtout frémis d'horreur au crime affreux, auquel ces Messieurs du Nord-Ouest, m'avoient fait participer, peu de jours auparavant sur la personne de Mr. Keveny.—Ayant cru jusqu'à ce moment là m'être conformé aux vœux du Gouvernement—sur quoi je me rendis prisonnier au Capitaine D'Orsonnens, et lui donnois tous les détails ci dessus.

*Fort-William, le 28 Octobre, 1816*

(Signe)

CHARLES DE REINHARD.

*Commis de la Compagnie du Nord-Ouest*

BEFORE Thomas, Earl of Selkirk, one of his Majesty's Justices assigned to keep the peace in the Western District of Upper Canada, and also in the Indian Territories, or parts of America not within the Provinces of Upper or Lower Canada, appeared, Charles De Reinhard, charged with the crime of murder, who being examined, confessed that he had assisted in murdering Mr. Owen Keveny, and gave in the annexed statement, written with his own hand, on the seven preceding pages and signed with his name, declaring that the same contained a true account of the transaction, and of the reason by which he was misled to participate in such a crime.

(Signed)

C. REINHARD,

*Commis de la Compagnie du Nord Ouest.*

Declared before me at Fort William,  
on the 3d day of November, 1816.

(Signed)

SELKIRK, J. P.

In presence of

J. Mathey, Capt. late D. M. Regt.

John William Dease,

John Allan,

Alex. Bridpord Becher,

} Witnesses.



## TRANSLATION.

I ~~THE~~ underwritten, Charles de Reinhard, having surrendered myself prisoner to Captain D'Orsonnens at Lake la Pluie, the 2d of October, 1816, in consequence of the various circumstances that have happened during the time I have been in the service of the North West Company, and with regard to the death of Mr. O. Keveny, I voluntarily make the following declaration.

My time of service being expired, as colour-serjeant in the regiment of Meuron, I was recommended by Lieutenant de Mesani, commanding my company, to Messieurs William M'Gillivray and M'Leod, as clerk in the North West Company, and I afterwards obtained my discharge from the regiment on the 21th of April 1816, in consequence of a special application made to his Excellency the Governor, Sir Gordon Drummond.

I engaged myself with the highest opinion, with which I had been impressed by Mr. Mesani, to serve with all possible zeal, a society of the most honourable nature, and under the protection of government, and I was much pleased when I took my departure for the North, in company with Lieutenants Mesani and Brumby, who had six months' leave of absence from the regiment, at the desire of the North West Company, in order to render an impartial account to Government of all that might occur in that country.

On the journey I often heard an opposition talked of, without understanding where or what it was, till we had arrived at Lake La Pluie, where Mr. Mesani informed me that Mr. M'Leod wished me to put on my military coat, as likewise my comrade, Heurtre, Messieurs M'Gillivray, M'Leod, and Mesani, having recommended us to take them with us before we left Montreal, in order to appear in a council of Indians, which took place in the audience hall, where Messrs. Mesani and Brumby were introduced as Captains, and I and Heurtre at their side, as people belonging to the King. Mr. M'Leod dictated the speech to the interpreter, and caused to be explained to the Indians what had occurred at the Red River, where Mr. Robertson had taken the fort like a robber, maltreated the prisoners, and after pillage

ging, burnt the whole, and that, because there was reason to be apprehensive of other violences, government had, on that account, sent those gentlemen, the officers, to see that justice was done, and Mr. M'Leod invited the Indians to take part with the North West Company, and to render them assistance for the defence of their rights. Upon which one of the Indian chiefs, and twenty four of his young men, after having received presents and ammunition, took their departure the following day, with the brigade, half of them in their own canoes, and half in those belonging to the brigade.

On his arrival at Bas de la Riviere, Mr. M'Leod caused the cases of arms to be opened, and armed the Canadians; two brass pieces of cannon were embarked, and the brigade moved on to Deadman's River, in order to wait for more canoes from Athabasca, which arrived the next day. On the 22d of June, the brigade proceeded along Deadman's River, and met with two barges with colonists, all whose boxes, trunks, &c. Mr. M'Leod examined, and kept a great many papers: he took no one prisoner but Mr. Pritchard, from whom the first accounts of the occurrences that had taken place at the Red River were obtained. Upon returning back to the preceding encampment with the colonists, Mr. Burke, who was wounded, and three other servants of the Hudson's Bay Company, were made prisoners, and put altogether into a tent, the overseeing of which was committed to me.

On the following day Mr. M'Leod and the other partners present, together with several clerks, took their departure in light canoes for the Forks, and in same manner, Messrs. Mesani and Brumby, immediately after their return and that of the other gentlemen from Deadman's River, departed with Mr. Hughes for Fort William to convey the news to Mr. M'Gillivray, and thence to repair forthwith to Montreal. After the brigade was reassembled, I was sent with the prisoners to Bas de la Riviere, and the brigade went to the Grand Rapid, fearing that Mr. Robertson might intercept the Athabasca loaded canoes, and Messrs. Macdonell and M'Lellan arrived at Bas de la Riviere four or five days after I did, with fifteen *Bois Brulés*, three-

pieces of cannon, two of which were brass, and one iron, two wall pieces, and about fifty guns, musquets of the old army model. On the return of the brigade from the Grand Rapid, the prisoners were embarked for Fort William, and I received instructions under the orders of Mr. M'Lellan to put the fort in a state of defence, as well against Mr. Robertson, who was supposed to have it in view to take possession of that provision post, where there were four or five hundred bags of pemican, as for the purpose of giving a reception with the cannon, and forty musquets in reserve, which were kept always loaded, to any canoe of the Hudson's Bay Company that might attempt to pass the post.

Having learnt that My Lord Selkirk had arrived at the Sault with a great number of men, artillery, &c. double vigilance took place at the fort, M'Lellan making all the people believe, that my Lord was their greatest enemy, degrading his character in every way, and representing Mr. Strahan's pamphlet as speaking of my Lord with too much moderation, publishing the opinion of three lawyers in order to prove the invalidity of the charter, and representing Lord Selkirk as acting without authority, and making laws according to his own good liking; that the government was decidedly in favour of the North West Company, since they had sent two officers to see that every thing was in order: that all that Lord Selkirk did was without the knowledge or the approbation of government.

In the beginning of August, intelligence was received at Bas de la Riviere, that a barge or boat with a few men, English, from Hudson's Bay, had arrived at Lake Du Bonnet. By the first loaded canoes from Athabasca, a man belonging to that barge, arrived, who said that he could not continue any longer with Mr. Keveny, who commanded that barge, and that his comrades would equally desert the first opportunity. A few days afterwards, four other men belonging to that barge, arrived with other Athabasca canoes. Two or three days after, Mr. M'Leod having arrived from Fort William, examined these men, one of whom, of the name of Hay, made oath, that Mr. Keveny had cruelly ill-treated him and his comrades, upon which Mr. M'Leod

granted a warrant against him, and nominated me, and one of his own men of the name of Castalo, as constables, to go and arrest him at the portage where his people had abandoned him. Mr. M'Lellan ordered six *Bois Brulés* to accompany me to assist; when I came there, about ten o'clock in the morning, I found Mr. Keveny in his tent, and I apprised him of my mission, making a prisoner of him in the King's name; he was much surprised, and seized hold of his pistols to defend himself. Having represented to him that his immediate death would be the inevitable consequence of his opposition to the law, he became quiet and required to see the warrant upon which he was arrested. Having read it, he again became outrageous, and it was with difficulty I prevented the *Bois Brulés* from dispatching him. Mr. Keveny was conveyed as a prisoner to Bas de la Riviere, I left Primeau, the interpreter, to take care of his property which was already under the charge of his clerk, named Cowly, and his servant, an Irishman. Having arrived at the fort with the prisoner, he had a violent altercation with M'Lellan, pretending not to be under the jurisdiction of Canada, being upon the Hudson's Bay Company's territory, he pretended to be independent of the law of Canada. On the following day, about ten o'clock, he was embarked for Fort William, in company with five *Bois Brulés*, to whom Mr. M'Lellan gave irons in order to make use of them in case the prisoner should resist. I was afterwards informed by the *Bois Brulés*, that when they came to the portage, the prisoner behaved in such a way as to force them to bind him and to handcuff him. Mr. Keveny's clerk (Cowly) being left by himself came to the fort, and requested Mr. M'Lellan to receive against an acknowledgment, the barge with its loading, and to grant him his liberty, together with one man to return in a small canoe to Albany Fort, whence they came. An acknowledgment was given for four calves, a still, a case of arms, quarters of salted beef, flour, &c. &c. On Primeau's return to the fort he delivered Mr. Keveny's papers to Mr. M'Lellan, and he kept for himself the clothes which he (Mr. Keveny) had left on going away for Fort William; he besides made presents to Mr. M'Lellan, of a

book, a case wine bottle, candlesticks, tea cups, and other small articles.

Amongst the papers there were printed instructions from Hudson's Bay. I was informed that Mr. Macdonell, having met the prisoner and the five *Bois Brulés*, replaced the five *Bois Brulés*, by two young Canadians and an Indian as guide, to convey the prisoner to lake La Pluie. Messrs. Stuart and Thomson, having, three or four days afterwards, met this canoe, caused it to turn back. The Canadians and the Indians having quarrelled, they separated, and the Canadians, being ignorant of the way, were no longer able to pursue their route, abandoned the prisoner in a small island, and stopped themselves at another island not far from him. Mr. Stuart having arrived at Bas de la Riviere with the news of the taking of Fort William, Mr. M'Lellan dispatched a light canoe for Athabasca to apprise Mr. McLeod, and another to Red River to apprise Mr. Macdonell, who arrived at Bas de la Riviere on the 4th of September, in the night, with the *Bois Brulés*, and Indians. All this time Mr. Keveny was expected, who did not arrive, and conjectures were formed either that the Indian had killed him, or that the Canadians had lost their way, or that the canoe had been lost. On the 5th of September Mr. Macdonell, and Mr. M'Lellan convoked all the people at Bas de la Riviere to hold a council; the capture of Fort William was stated in a proclamation, and the danger represented which would be incurred by allowing the enemy to penetrate farther; and those who chose to volunteer their services to go to lake La Pluie were desired to declare themselves. The greatest number having refused and preferring to defend their lands at Red River, Mr. M'Lellan took a light canoe with Mr. Grant, Cadot, and me, his *Bois Brulés*, and his servant, a Canadian, with the intention of proceeding to lake La Pluie in order to obtain intelligence, and at the same time to endeavour to discover what had become of Mr. Keveny. On the voyage the general tenor of the conversation was, that if he was found, he ought to be dispatched, as being a determined enemy of the Company, and capable of doing much harm at Red River, if after a while he

should have the opportunity of taking revenge. After four days march, the Indian was found near a small river, a few hours afterwards the Canadians were perceived, upon whom M'Lellan bestowed much abuse, and a good many blows with a canoe pole, for having beaten the Indian, and abandoned the prisoner. The *Bois Brulés* abused the Canadians for having prevented the Indian from killing the prisoner, who said he ought to be put to death the moment he was taken. Mr. M'Lellan having enquired where he might meet with the prisoner, took the Canadians in his canoe, the Indian being there already, covered over with a Scotch cloak, that he might not be recognized. Mr. M'Lellan became enraged when he came to the island where the prisoner had been left and he did not find him, believing that he had escaped towards Hudson's Bay, and he searched amongst all the Indians, until he found him out by his tent, which was pitched near an Indian family, to whom M'Lellan made a present of rum and tobacco, and traded a small canoe, in order to embark the prisoner with me, and a *Bois Brulé* and the Indian, saying to me, "Make the prisoner believe that he is going to lake La Pluie. We can not kill him here amongst the Indians. We will wait for you farther on, and when you come to a suitable place you know what you have got to do." Upon which he went away. About three quarters of an hour afterwards, when the Indian women had finished gumming the small canoe, I caused the prisoner to embark with all his baggage, with the exception of a trunk and a portmanteau which were put into Mr. M'Lellan's canoe, and about a quarter of a league from there, where the river makes an elbow, and Mr. Keveny having asked to go on shore for his necessities, I said to Mainville (the *Bois Brulé*) "We are far enough from the Indians, you may fire when he comes near enough to embark," the Indian held the canoe fast by the bow, and I was also on shore. Upon Mr. Keveny's approaching, in order to embark, Mainville fired his gun at him, the contents of which went through his neck, and as I saw that the wound was not mortal enough, and that Mr. Keveny still attempted to speak, having fallen forwards upon the boat, I run

my sword behind his back through his heart in two thrusts, in order to put him out of his pain. Being quite dead, they stripped the body, and carried it into the wood. Having got to Mr. M'Lellan's camp, who, when he saw the small canoe arrive, he sent Mr. Grant and Cadot, to ask me whether Mr. Keveny was killed. Having replied in the affirmative, they told me that Mr. M'Lellan had sent them to give me orders not to say he was killed, upon which I said, that he was killed, and that I would not conceal it, as it had been done by his orders. When we came to the camp M'Lellan required to know the details of the murder, which I gave him as above, and I gave up to him his tent, his bed, and all the baggage. During the night he examined all the papers, burning some and keeping others, and the rest he left to my discretion: I distributed amongst the *Bois Brulés* some clothes that had been worn. Mr. Grant asked for the tent, and Mr. Cadot for sundry articles, and I reckoned upon keeping a box with good clothes for my share, but the whole was left concealed, (*en cache*,) till we should come back from lake la Pluie. On the 13th of September in the evening we arrived at Fort lake La Pluie, where, finding that the fort was not in the occupation of Lord Selkirk's party, Mr. M'Lellan proposed to proceed on to Fort William to procure intelligence, but the *Bois Brulés* having refused to do so, he proposed to me to go down in a small canoe, with two or three Canadians, but Mr. Dease, having his family at the fort, asked and obtained leave to go in my stead. Mr. M'Lellan took his departure for Bas de la Rivière on the seventeenth, and I was to remain at lake La Pluie, till Mr. Dease's return: on the 2d of October, very early in the morning, I received a letter from Captain D'Orsonnens, who had learnt from the Indians that I was there; he admonished me not to fly from the place, that he positively must have some conversation with me about the Red River affairs, sending me at the same time a copy of the Governor's proclamation. Captain D'Orsonnens having arrived about two o'clock, with Mr. Dease, and having explained to me the situation of the two companies, and that those who belonged to the North-West who were at the Red

River, would be considered as rebels by government, if they persisted in their conduct. I was much surprised at this intelligence, and above all I shuddered with horror at the dreadful crime in which those gentlemen of the North West had caused me to participate, a few days before, upon the person of Mr. Keveny—having till that moment conceived that I had been acting in conformity with the wishes of government—Whereupon I gave myself up as a prisoner to Captain D'Orsonnens, and gave him all the above mentioned details.

(Signed)

C. DE REINHARD,

*Clerk of the North West Company.*

*Fort-William, the 28th October, 1816.*



## (APPENDIX E.)

BY HIS ROYAL HIGHNESS  
THE PRINCE OF WALES,

REGENT of the United Kingdom of Great-Britain and Ireland,  
in the name and on the behalf of His Majesty,

## A PROCLAMATION.

J. C. SHERBROOKE,

WHEREAS by an Act of the Parliament of the United Kingdom of Great-Britain and Ireland, passed in the forty-third year of His Majesty's reign, intituled "An Act for extending the jurisdiction of the Courts of Justice in the Provinces of Lower and Upper Canada to the trial and punishment of persons guilty of crimes and offences within certain parts of North-America adjoining to the said provinces," it is, amongst other things, enacted, that all offences committed within any of the Indian Territories or parts of America not within the limits of either of the said Provinces, or of any civil government of the United States of America, shall be, and be deemed to be, offences of the same nature, and shall be tried in the same manner, and be subject to the same punishment, as if the same had been committed within the said Provinces of Lower or Upper Canada." And whereas, by the said Act it is also enacted, "that it shall be lawful for the Governor, or Lieutenant Governor, or person administering the government for the time being of the Province of Lower Canada, by commission, under his hand and seal, to authorize and empower, any person or persons wheresoever resident or being at the time, to act as civil magistrates and justices of the peace, for any of the Indian Territories or parts of America not within the limits of either of the said Provinces, or of any civil government of the United States of America, as well as within the limits of either of the said Provinces, either upon informations taken or given within the said Provinces of Lower or Upper Canada, or out of the said Provinces in any parts of the Indian Territories, or parts of America

"aforesaid, for the purpose only of hearing crimes and offences,  
 "and committing any person or persons guilty of any crime or  
 "offence to safe custody, in order to his or their being convey-  
 "ed to the said Province of Lower Canada, to be dealt with  
 "according to law," and "that it shall be lawful for any per-  
 "son or persons whatever to apprehend and take before any  
 "persons so commissioned, as aforesaid, or to apprehend and  
 "convey, or cause to be safely conveyed, with all convenient  
 "speed, to the Province of Lower Canada, any person or per-  
 "sons guilty of any crime or offence, there to be delivered into  
 "safe custody, for the purpose of being dealt with according  
 "to law:" And whereas, by the said act it is also further en-  
 "acted, "that every such offender may, and shall, be prosecut-  
 "ed and tried in His Majesty's Courts of the Province of Low-  
 "er Canada, in which crimes and offences of the like nature  
 "are usually tried, and where the same would have been tried  
 "if such crime or offence had been committed within the limits  
 "of the Province where the same shall be tried under the said  
 "Act; that every offender tried and convicted under the said  
 "Act, shall be liable and subject to such punishment as may,  
 "by any law in force in the Province where he or she shall be  
 "tried, be inflicted for such crime or offence, and that such  
 "Court may and shall proceed to trial, judgment, and execu-  
 "tion, or other punishment, for such crime or offence in the  
 "same manner in every respect as if such crime or offence had  
 "been really committed within the jurisdiction of such Court,  
 "and to proceed also in the trial of any person, being a sub-  
 "ject of His Majesty, who shall be charged with any offence,  
 "notwithstanding such offence shall appear to have been com-  
 "mitted within the limits of any colony, settlement, or territo-  
 "ry, belonging to any European state." And, whereas divers  
 "breaches of the peace and acts of force and violence have late-  
 "ly been committed within the said Indian Territories and parts  
 "of America mentioned and described in the said Act of Parlia-  
 "ment, which have arisen from contentions between certain mer-  
 "chants carrying on trade and commerce in the said Indian Ter-  
 "ritories, under the names of the Hudson's Bay Company, and the

North West Company respectively, and other persons, their servants, agents, or adherents, of whom some have entered into, and seized, and occupied by force, and with strong hand, lands or possessions therein, taking and by force retaining, divers goods, wares, merchandize, and other property, and obstructing the passage of navigable rivers, and other natural passes of the country, and others have met together in unlawful assemblies, formed divers conspiracies, and confederacies, committed murders, riots, routs, and affrays, and appeared, gone, and ridden, in companies in military array, with armed force, and have rescued themselves and others from lawful arrest and custody; We do, therefore, in the name and on the behalf of His Majesty, publish this proclamation, hereby calling upon the said merchants, so as aforesaid carrying on trade and commerce, in the said Indian Territories under the names of the Hudson's Bay Company and the North West Company, respectively, and upon each and every of them, and upon all other persons, their servants, agents, or adherents, and each and every of them, to desist from every hostile aggression or attack whatsoever, and in order to prevent the further employment of an unauthorized military force, We do hereby require all persons who have been heretofore engaged in His Majesty's service as officers or soldiers, and as such have enlisted and engaged in the service of the said Hudson's Bay Company, or North West Company, or either of them, or of any of their servants, agents, or adherents, to leave the service in which they may be so engaged, within twenty-four hours after their knowledge of this Proclamation, under penalty of incurring our most severe displeasure, and forfeiting every privilege to which their former employment in His Majesty's service would otherwise have entitled them. And we do, under similar penalties, hereby require of all and every person and persons whomsoever, whom it doth, or shall, or may, in any wise concern, the restitution of all forts, buildings, or trading stations, with the property which they contain, which may have been seized or taken possession of, by either party, to the party who originally established or constructed the same, and were possessed there-

of previous to the recent disputes between the aforesaid companies ; and we do hereby require, in like manner, of every person and persons whomsoever whom it doth, or shall, or may, in any way concern, the removal of any blockade or impediment, by which any party, person, or persons, may have attempted to prevent or interrupt the free passage of traders or others of His Majesty's subjects, or of the natives of the said Indian Territories, with their merchandize, furs, provisions, and other effects, throughout the lakes, rivers, roads, and every other route or communication heretofore used for the purposes of the fur trade in the interior of North America, and full and free permission for all persons to pursue their usual and accustomed trade without hindrance or molestation, hereby declaring that nothing done in consequence of this Proclamation shall, in any degree, be considered to affect the rights which may ultimately be adjudged to belong to either or any party, upon a full consideration of all the circumstances of their several claims. And whereas, for the purpose of restraining all offences in the said Indian Territories, and of bringing to condign punishment the perpetrators of all offences there committed, His Excellency Sir John Coape Sherbrooke, Knight Grand Cross of the most honourable military order of the Bath, His Majesty's Captain General and Governor in Chief, in and over the Provinces of Lower and Upper Canada, Nova Scotia, New Brunswick, and their several dependencies, Lieutenant General and Commander of all His Majesty's Forces in the said Provinces, &c. &c. &c. by and with the advice of His Majesty's Executive Council of and for the said Province of Lower Canada, hath nominated, constituted, and authorized, the honourable William Bachelor Coltman, one of the members of the said council, a Lieutenant Colonel in His Majesty's Indian Department, and one of His Majesty's justices of the peace for the Western district of the said Province of Upper Canada, and John Fletcher, Esq. Barrister at Law, one of the principal police-magistrates, and Chairman of His Majesty's Court of Quarter Sessions for the district of Quebec, a Major in the said department and one of His Majesty's justices of the peace for the said West

ern district of Upper Canada, to act as civil magistrates and justices of the peace for the said Indian Territories, and parts of America aforesaid, as well without as within the said Provinces of Lower and Upper Canada, under and by virtue of the said Act, and also His Majesty's special commissioners, for enquiring into, and investigating, all offences committed in the said Indian Territories, and the circumstances attending the same, with power and authority for such purposes. And whereas, the said William Bachelor Coltman, and John Fletcher, are immediately about to proceed to the said Indian Territories, in execution of the trust so reposed in them. We do, therefore, hereby strictly charge and command, in the name and on the behalf of His Majesty, all sheriffs, bailiffs, constables; and other officers of the peace, and all others His Majesty's officers, servants, and subjects, civil and military, generally in their several and respective stations, to make diligent enquiry and search, to discover and apprehend all persons who have been, or shall be, guilty of any such crimes or offences as aforesaid, or any other crimes or offences whatsoever, within the Indian Territories, or parts of America in the said act mentioned and described, whether without or within the said Provinces of Upper or Lower Canada, and to cause them to be carried before the said William Bachelor Coltman and John Fletcher, or one of them, or such other magistrates as may hereafter be appointed for the like purposes, or otherwise be invested with competent jurisdiction in that behalf, to be dealt with according to Law, and by all lawful means and ways whatsoever, to repress and discourage all such crimes and offences, requiring and directing them and each of them, as well within the said Indian Territories, or parts of America, as elsewhere, to be aiding and assisting to the said William Bachelor Coltman and John Fletcher, in the execution of the duties wherewith they are charged as such magistrates and special commissioners as aforesaid, in all their endeavours for the repression and discouragement of all such crimes and offences wheresoever, or by whomsoever perpetrated or committed, for the detection and apprehension of all such persons as have been,

or hereafter shall be, concerned or implicated in the perpetration thereof and for the maintenance and preservation of the peace and of the laws.

In faith and testimony whereof, we, by our express command, in the name and on the behalf of His Majesty, have caused the great Seal of the Province of Lower Canada to be hereunto affixed. Witness our trusty and well beloved, Sir John Coape Sherbrooke, Knight Grand Cross of the most honourable military order of the Bath, Captain General and Governor in Chief of the said provinces of Lower and Upper Canada, Nova Scotia and New Brunswick, Lieutenant General and Commander of all His Majesty's forces in the said Provinces, &c. &c. at the Castle of Saint Lewis, in the City of Quebec, in the said Province of Lower Canada, this third day of May, in the year of our Lord Christ, one thousand eight hundred and seventeen, and in the fifty seventh year of His Majesty's reign.

J. C. S.

By His Excellency's  
command  
JOHN TAYLOR,  
Depty. Secty. }

## APPENDIX E.

Captain FREDERICK MATTHEY,

DEAR SIR,

William\* is this moment expediting Charrith, and Morache. Reinhard refuses to come to Mr. Murphy's chambers. He says, neither his Lordship or you said any to him on that arrangement; that he is comfortable where he is and that his determination is to perform the promises made to Earl Selkirk and to you. Be so good as give Mr. Bourke a hint that when he requests any thing his lists may be correct and signed by himself or Mr. Becher, as they will be kept for his Lordship's inspection. The ice is again driven to our shore in a very narrow line, the bay will soon be clear.

I am, Yours very sincerely,

(Signed)

JOHN McNAB.

[ENDORSED]

Letter from Mr. John McNab to Capt. Frederick Matthey regarding Reinhard.

May 1817.

Filed and read 28th May.

(Signed)

J. B.

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\* The mutilated state in which McNab's letter now is, from its having been torn and pasted together again, renders it uncertain whether the name is William or Willan.

## APPENDIX F.

LES circonstances alarmantes où se trouve dans ce moment le poste de la Lac la Pluie a forcé le Capt. P. D'Orsonnens de s'emparer des armes et munitions du Fort occupé par la compagnie du Nord Ouest, pour la sureté des sujets de sa Majesté qui se trouvent dans l'endroit. Cette mesure indispensable pour la tranquillité du public étapte à Mr. J. Dease, chef du poste, les moyens de traiter avec les Sauvages qui pourroient faire un mauvais usage des armes et munitions qu'ils recevroient.

En outre le Capt. P. D'Orsonnens pouvant assurer sur sa parole d'honneur qu'il attend à chaque instant un ordre regulier, conformément à la loi, pour le deguerissement du Fort occupé par la compagnie du Nord Ouest : le Capt. P. D'Orsonnens et Mr. J. Dease, commis en chef de la compagnie du Nord Ouest au Lac la Pluie, ont jugé convenable pour la sureté de chaque individu interessé dans les circonstances actuelles de prendre un Inventaire de tous les Effets appartenans à la compagnie du Nord Ouest dans l'endroit, en y incluant *les caches de provisions* qui seront annoncée jusqu'à la fin de l'année, pour que le tout soit fidelement remis aux commis de la compagnie d'Hudson qui sont presens dans l'endroit : cette compagnie rendra un compte exact selon la loi, de tous les objects qui auront été remis à leurs commis par ceux de la compagnie du Nord Ouest— le Capt. P. D'Orsonnens se rendant caution de l'execution de cet arrangement.

(Sd.)

P. J. D'ORSONNENS,  
*Comt. le Poste du Lac la Pluie.*

(Sd)

JOHN W. DEASE,  
*Commis en chef pour Nord Ouest.*

## TEMOINS,

JACQUES CHASTELLAIN,  
*Commis pour la comp. d'Hudson.*

LOUIS NOLIN,  
*Commis compagnie d'Hudson.*



## TRANSLATION.

THE alarming circumstances under which the post of Lake La Pluie is, at this moment, placed, have compelled Capt. P. D'Orsonnens to seize the arms and ammunition of the fort occupied by the North West Company, for the safety of his Majesty's subjects who are on the spot; this measure, indispensable for the tranquillity of the public, depriving Mr. J. Dease, chief of the post, of the means of trading with the Indians, who might make a bad use of the arms and ammunition they might receive.

Besides, Capt. P. D'Orsonnens, having it in his power, to assure upon his word of honour, that he is every moment in expectation of a regular order, conformable to law, for the quitting of the fort occupied by the North West Company, Capt. P. D'Orsonnens and Mr. J. Dease, chief clerk of the North West Company at the Lake La Pluie, have deemed it expedient for the security of every individual involved in the present circumstances, to take an inventory of all the effects belonging to the North West Company in the place, including the *Caches of provisions*\* which may be announced until the end of the year, in order that the whole may be faithfully delivered up to the clerks of the Hudson's Bay Company, who are present on the spot: that Company will render an exact account, according to law, of all the matters which will have been delivered to their clerks by those of the North West Company, Capt. P. D'Orsonnens rendering himself responsible for the execution of this arrangement.

(Signed)

P. D'ORSONNENS,

*Commanding the post of Lake La Pluie.*

(Signed)

JOHN W. DEASE,

*Chief Clerk for the North West Company.*

WITNESSES.

JACQUES CHASTELLAIN,

*Clerk for the Hudson's Bay Company.*

LOUIS NOLIN,

*Clerk for the Hudson's Bay Company.*

\* Caches are hiding places, either dug in the ground, or placed upon scaffolds in the interior of the woods, where provisions and other articles, are secreted during the winter, or during the absence of the proprietors, to be fetched away in the spring or on their return. The Caches alluded to here were depots of wild rice collected by the Indians and others for the use of the North West Company.

## APPENDIX G.

PROVINCE OF LOWER CANADA, }  
*City and District of Quebec.* }

BE it remembered, that at a Special Session of Oyer and Terminer and general gaol delivery, of our Sovereign Lord the King, of and for the district of Quebec, holden at the city of Quebec, in the aforesaid district of Quebec, on Monday the eighteenth day of May, in the fifty eighth year of the Reign of our Sovereign Lord George the third, by the grace of God of the united Kingdoms of Great Britain and Ireland, King, defender of the Faith, before the honourable Jonathan Scwell, Chief Justice of our said Lord the King, of and for his said Province of Lower Canada, and the honourable Edward Bowen, one of the Justices of our said Sovereign Lord the King, of his Court of King's Bench, of and for the said district of Quebec, and others, their fellow Justices and Commissioners of our said Lord the King, assigned by letters patent under his Great Seal, of his said Province of Lower Canada, made to them and others, and any two or more of them, (of whom our said Sovereign Lord the King willed the aforesaid honourable Jonathan Sewell, or the honourable James Monk, Chief Justice of our said Sovereign Lord the King, of his Court of King's Bench, of and for the district of Montreal, in the said Province, in the same letters patent named and appointed to be one) to enquire by the oath of good and lawful men of the district of Quebec, in the said Province of Lower Canada, by whom the truth of the matter might be better known, and by other ways, methods and means, whereby they could or might the better know more fully the truth, of all murders, burglaries, felonies, and the accessaries thereto, manslaughter, killings, misprisions, confederacies, false allegations, trespasses, riots, routs, retentions, escapes, contempt, falsities, negligences, concealments, maintainances, oppressions, champerties, deceits, and all other evil doings, offences and injuries whatsoever, and all the accessaries of the same, within the district aforesaid, as well within liberties as without, or committed within any of the Indian Territories, or

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parts of America not within the limits of either of the Provinces of Upper or Lower Canada, or of any civil government of the United States of America, by whomsoever and in what manner soever done, committed or perpetrated, and by what person or persons, to what person or persons, and in what manner soever, and of all other articles and circumstances in the said letters patent of the said Lord the King specified; the premises, and every or any of them howsoever concerning, and for this time, to hear and determine the premises according to the laws and customs of England, and of the said Province of Lower Canada, for this time to hear and determine by the oath of Thomas Wilson, Louis Gauvreau, John Dapwell Hamilton, Antonie Ovide Delaunadiere, John McNider, Thomas Aylwin, François Languedoc, John Goudie, Thos. Lee, François Belanger, Felix Tetu, Claude Denechau, Jas. Stansfeld, Jas. Ross, François Dureth, Amable Durme, Benjamin Lemoine, Esquires, good and lawful men of the aforesaid district of Quebec, now here sworn and charged to enquire for our Sovereign Lord the King, for the body of the said district, touching and concerning the premises in the said letters patent mentioned. It is presented in manner and form as followeth: that is to say; Province of Lower Canada, district of Quebec, viz. "The Jurors for our Lord the King upon their oath present, that Charles De Reinhard, &c." (vide Indictment, Appendix C. De Reinhard's trial,) whereupon the Sheriff of the district of Quebec, aforesaid, is commanded that he omit not for any liberty in his district but that he take the said Charles De Reinhard if he may be found in his district and him safely keep to answer to the felony and murder whereof he stands indicted, and which said indictment the commissioners of the said Lord the King above named afterwards, viz. At the delivery of the Gaol of the said Lord the King, holden at Quebec, in and for the district of Quebec aforesaid, on Wednesday the twentieth day of May, in the said fifty eighth year of the reign of the said Lord the King, before the said honourable Jonathan Sewell and Edward Bowen, Commissioners of the said Lord the King, assigned as aforesaid to deliver his said gaol of the district aforesaid, of the prisoners therein being, by their proper

hands do deliver here in Court of Record in form of the law to be determine. And afterwards, viz. on the same delivery of the gaol of the said Lord the King of his district aforesaid, on the said Wednesday the twentieth day of May, in the said fifty eighth year of the reign of the said Lord the King, before the said commissioners of the said Lord the King last above named. Here cometh the said Charles De Reinhard, under the custody of Phillip Gaspe, Esquire, Sheriff of the district aforesaid, (in whose custody in the gaol of the district aforesaid, for the cause aforesaid, he had been before committed) being brought to the bar here in his proper person by the said Sheriff, to whom he is here also committed.—And forthwith being demanded concerning the premises in the said indictment above specified and charged upon him here he will acquit himself thereof, he saith he is not guilty thereof, and thereof, for good and evil, he puts himself upon the country, and Norman Fitz-Gerald Uniacke, Esq. Attorney General, who prosecutes for the said Lord the King, in this behalf doth the same.—Wherefore, let a jury thereupon here come before the said commissioners of the Lord the King, on Friday the twenty second day of May, in the year aforesaid, of free and lawful men of the body of the said district and from the Precinct of Quebec aforesaid, by whom the truth of the matter may be the better known, and who are not of kin to the said Charles De Reinhard, to recognize upon their oath whether the said Charles De Reinhard be guilty of the felony and murder in the indictment aforesaid above specified, or not guilty. Because as well the said Charles De Reinhard, as the said Norman Fitz-Gerald Uniacke, who prosecutes for the said Lord the King, in this behalf, have put themselves upon the said jury, and the jurors of the said jury, on the said twenty second day of May, for this purpose impanelled and returned, viz. Thomas Levallée, Stephen Curtis, Lawrent Audy, Joseph Miville, Olivier Trahan, Roger Sasseville, Ralph Brewer, Jean Laforme, Simon Lecomte, Joseph Prevost, Daniel Thompson, Jean Denoyes, being called, came, who, being elected, tried and sworn to speak the truth of and concerning the premises, upon their oath say, that the said Charles De Reinhard is

guilty, in manner and form as laid in the fourth and eighth counts of the indictment, and not guilty of the rest of the indictment. And upon this it is forthwith demanded of the said Charles De Reinhard, if he hath, or knoweth any thing to say wherefore the said commissioners here ought not, upon the premises and verdict aforesaid, to proceed to judgment and execution against him, who having nothing to say to impede the judgment of law, and all and singular that premises being seen and by the said justices here fully understood. It is considered by the Court here, that the said Charles De Reinhard be taken to the goal of the said Lord the King, for the district of Quebec, from whence he came and from thence to the place of execution, on Monday now next ensuing, being the eighth day of this instant June, and there be hanged by the neck until he be dead, and that afterwards his body be dissected and anatomized.

**TRIAL**

**OF**

**ARCHIBALD M'LELLAN, Esq.**



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DISTRICT OF }  
QUEBEC. }

*Special Session of OYER and TERMINER, and*  
GENERAL GAOL DELIVERY.

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*Tuesday, June 9th, 1818.*

PRESENT.

HIS HONOR CHIEF JUSTICE SEWELL,  
The Honorable MR. JUSTICE PERRAULT,  
The Honorable MR. JUSTICE BOWEN.  
ALEXIS CARON, Esquire, King's Counsel, and  
Chairman of the Court of Quarter Sessions  
for the District of Quebec, a Special Com-  
missioner.

THE Special Commission appointing George Pyke,  
Esquire, Advocate General, and Alexis Caron,  
Esquire, King's Counsel, and Chairman of the Court  
of Quarter Sessions for the District of Quebec, Com-  
missioners of the Court of Oyer and Terminer and  
General Gaol Delivery, were read by the Clerk of  
the Crown.

*Attorney General.*—I move that Archibald M<sup>r</sup>.  
Lellan be put to the bar for the purpose of arraign-  
ment.



*Mr. Stuart.*—I resist the motion of the Attorney General on several grounds; indeed, after what has passed, I should not have supposed that the Crown Officers would have proceeded with any more trials on this indictment at present. However, as they have, I oppose the arraignment of Mr. M'Lellan for—

*Chief Justice Sewell.*—I do not think that at present we can hear you, Mr. Stuart. The indictment must be first read to him, and then you may demur, or plead to it, as you think proper.

*Mr. Justice Bowen.*—Yes certainly it must be read to him first, for at present you are not before the Court. Till he is formally accused by the indictment being read to him, he is not in a situation to be heard by the Court. Let that be read, and then he can plead according to his discretion.

*Mr. Stuart.*—We have no objection—It is a mere matter of course.

*Chief Justice Sewell.*—No not quite so on an indictment for murder. But unless the indictment is read you can not plead. When that is done, you can plead what you like.

*Mr. Stuart.*—My objection to any step being taken relative to the other persons named in the indictment is, that the Court can not proceed to decide the limits of Upper Canada, and that till that question is settled, it is useless to expose these persons to the hazard of a long imprisonment, whilst the necessary representations are made to the Government at home.

*Chief Justice Sewell.*—If you think proper you can state your objection in the form of a demurrer to the indictment, or you can put in a special plea of exceptions to our Jurisdiction. The indictment being read does not deprive you of any privilege

you at present possess, it rather opens the door to you to make your objection. That is our opinion.

*Mr. Stuart.*—Well, if so, we do not care when it takes place; it may as well be now.

*Chief Justice Sewell.*—I do not see how it can well be otherwise. His pleading must appear upon the record. To do this, he must plead something, or else how can he be heard by the Court.

*Mr. Justice Bowen.*—The issue to be tried is at present unknown, nor can it, in a legal point of view, be known to us till the defendant pleads to the indictment. If you except to the jurisdiction, you, I imagine, will do so on the substantial averment of the indictment that the offence was committed in the Indian Territory. This can be done in the form of a demurrer or special exception to the power of the Court.

*Mr. Stuart.*—It appears to me that it would be far preferable, and that the ends of justice would be equally attained, were the remainder of the trials on this Indictment to be laid aside till this point is decided by the high authority to whom the whole is to be referred. It seems to me rather an extraordinary step on the part of the Crown to press these proceedings under the very peculiar circumstances of the case. I perhaps might be permitted to move the Court that they would make an order that further proceedings upon this indictment be staid till the points in controversy are settled.

*Chief Justice Sewell.*—Not at present you can not, you can not come by way of motion, because you are not on the record. You must first plead something, and then we will hear you in any way your judgment may point out as most suitable.

*ARCHIBALD M'LELLAN was then put to the Bar.*

*Clerk of the Crown.*—Archibald M'Lellan, Hold up your right hand.

*The prisoner was then arraigned upon the indictment.*  
*[Appendix to De Reinhard's Trial, C.]*

*Clerk of the Crown.*—How say you, Archibald M'Lellan, are you guilty of the felony and murder whereof you stand indicted, or not guilty?

*Prisoner.*—Not guilty.

*Mr. Stuart.*—I beg to mention to the Court thus early that we merely put in this plea, that we may appear on the record. We shall have a special plea to put in, but it will require some time to prepare it.

*Mr. Justice Bowen.*—There will be no difficulty about giving you any time you may require, but let the arraignment be finished.

*Clerk of the Crown.*—How will you be tried.

*Prisoner.*—By God and my Country.

*Clerk of the Crown.*—God send you a good deliverance. When will you be ready for your trial?

*Mr. Stuart.*—The special plea which we have to prepare will necessarily take a considerable time to draw up, as we must consult together upon it. I should think however we can be ready by Thursday.

*Chief Justice Sewell.*—Very well, if that is agreeable to his Majesty's Crown Officers, we have no objection.

*Solicitor General.*—We have no wish unreasonably to press upon the prisoner, but we trust the gentlemen will then be ready. In the interim I move, as a matter of course, that Archibald M'Lellan be committed to prison.

*Mr. Stuart.*—Mr. M'Lellan is on bail, which I conceive is quite sufficient. He is under security to a large amount.

*Chief Justice Sewell.*—After his arraignment he can not be permitted to be at large. Let the Court be adjourned till Thursday morning at eight o'clock, A. M.

Thursday, 11th June, 1818.

PRESENT,

HIS HONOR CHIEF JUSTICE SEWELL,  
THE HONORABLE MR. JUSTICE BOWEN.  
ALEXIS CARON, Esquire, King's Counsel.

*Attorney General.*—I move that Archibald M'Lellan be put to the bar.

*Mr. Stuart.*—Mr. M'Lellan has most strongly solicited his counsel to allow the plea of the general issue to stand to the end, that he may receive a speedy trial. We have, after great doubt as to the propriety of our so doing, in a legal point of view, at length acceded to his urgent representations, and our only plea is, *Not Guilty*. Our own opinions as to the special plea are not at all changed, for in adopting this course, we are rather surrendering our own judgments to the anxiety of the defendant, who, conscious of his innocence, prefers an immediate trial under some disadvantages, to protracting the process by availing himself of any privilege which the law gives him, though his counsel felt it their duty to plead it in the first instance. Expecting that our plea would have been put in, our witnesses are not in attendance to day, but they shall be to-morrow.

*Attorney General.*—I hope there is not to be any more delay.

*Mr. Stuart.*—The late hour at which we consented to this course, left us no opportunity of securing their attendance. To-morrow, however, we shall be fully ready, as I assure the learned Crown Officers, we are as anxious to receive our trial, as they are to put us upon it. Indeed I think we give a tolerable strong assurance of our anxiety, by adopt-

ing our present course, and abandoning all the advantages of demurring to the indictment. The defendant is in close custody, consequently no inconvenience can occur to the Crown from the delay.

*Chief Justice Sewell.*—Adjourn the Court till eight o'clock A. M. to-morrow. And I beg, as I did on the former trial, to remind the gentlemen who are summoned to attend as jurors of the vast importance it is to the justice of the country, and to the prisoner, that every privilege given by the law to both parties should be secured to them. The right of challenging jurors belongs alike to the Crown and the prisoner, and it is a most important one. The Court is about being adjourned until the hour of eight o'clock to-morrow morning, and we feel assured that it is unnecessary to add any thing further, as an inducement to every gentlemen summoned as a petty juror, to be punctual in his attendance at that hour.

*The Court was then adjourned till eight o'clock A. M. to-morrow.*

Friday, 12th June, 1818.

PRESENT,

His Honor CHIEF JUSTICE SEWELL,  
ALEXIS CARON, Esquire, King's Counsel.

DOMINUS REX,	}	ON an indictment
<i>versus,</i>		for the murder of O-
CHARLES DE REINHARD,		WEN KEVENY, on the
ARCHIBALD M'LELLAN,		11th day of Septem-
CUTHBERT GRANT,		ber, 1816.
JOSEPH CADOTTE,		
JEAN BAPTISTE DESMARAIS.		

COUNSEL FOR THE CROWN,

Mr. Attorney-General, UNIACKE,  
Mr. Solicitor-General, MARSHALL,

COUNSEL FOR THE PRISONER,

GEORGE VANFELSON.	}	Esquires.
ANDREW STUART,		
J. R. VALLIERE DE ST. REAL,		

Archibald M'Lellan was put to the bar, and informed of his right of challenging and the time of making his challenges, when, after several being made, on the part of the Crown, and of the prisoner, the following gentlemen were sworn as a jury.

WILLIAM MEASAM,	JOHN GLATTEVER,
JOHN ORCHARD,	JACQUES TRANQUIL,
JACQUES LA FLEUR,	JOSEPH CHAMBERLAND,
GEORGE POTTS,	DANIEL GOLSTROM,
DAVID GOLSTROM,	JOHN HERSEY,
JACQUES BOILIEU,	JOSEPH DEFOI.

The Clerk of the Crown was about reading the indictment, when the Attorney General directed Mr. Waller to commence at the fourth count.

Chief Justice Sewell.—Had you not better, Mr. Attorney-General, proceed at once to the eighth

count, which embraces the fourth, and in addition, charges the prisoner with being an accessory after the fact.

*Attorney General*.—Yes, your Honour, I think we had.—Read then the preamble, and afterwards go on to the eighth count, Mr. Waller.

*The preamble was then read.—(Appendix to former trial C.)*

*Chief Justice Sexell*.—Before the count is read, I would remark that it is the right of the counsel for the prisoner, to insist on his behalf, that the whole indictment be read, if they think proper. If less than the whole is read, it must be by their consent, but as the eighth count contains the whole of the allegation against the defendant, it perhaps will be thought unnecessary to trouble the jury with the whole of this long indictment, but if there exists the slightest wish to have the whole read, let it be mentioned.

*Mr. Stuart*.—We have no desire to have it read.

*The eighth count was then read by Mr. Waller, who informed the jury that to this indictment the prisoner had, upon his arraignment, pleaded, Not Guilty, and for his trial had put himself upon God and his Country, which Country they were; they would, therefore, stand together and hearken to the evidence.*

*Attorney General*.—May it please the Court;

Gentlemen of the Jury,

The prisoner at the bar, Archibald M'Lellan, is accused of the crime of murder in killing one Owen Keveny in the Indian Territory. By the indictment, or that part of it which you have just heard read, you must have perceived that the present prisoner is not charged as being the actual perpetrator of the murder, the accusation against him is that he

was an accessory, both before, and after, the commission of the offence. The principal, Charles de Reinhard, gentlemen, has been convicted in this Court of the murder charged in the indictment to have been committed by the persons named therein, and the record of his conviction will, in the progress of this trial, be produced and made evidence against the defendant, as establishing (as it is incumbent upon us to do) beyond the power of controversy, the actual commission of the murder to which we allege Archibald M'Lellan was accessory. A very few words will suffice to explain what is meant in law by accessory before and after the fact. An accessory before the fact, in law, is one who, though absent at the actual perpetration of the murder, has, before its commission, invited, counselled, or in any way led to, the crime being perpetrated, and the punishment of the law is the same to the accessory as to the actual murderer. The crime of accessory after the fact, (which is another branch of the accusation against the prisoner at the bar,) consists in harbouring, or affording protection, to the murderer, the fact being within the knowledge of the person affording the protection. Each of these separate allegations we expect to sustain satisfactorily so as to compel you, in the discharge of your duty, to say the prisoner at the bar is guilty of the crime whereof he stands charged in the indictment. The prisoner at the bar, gentlemen, is a partner in the North West Company, and the deceased Owen Keveny was a servant in the employ of the Hudson's Bay Company. Of these two Companies and their unfortunate disputes, it is impossible but you, gentlemen, as well as other persons, must have heard a great deal, but it is your bounden duty to discard from your minds every thing you may have heard or read upon the subject, and, uninfluenced by any



thing but what shall be placed before you in evidence, and the charge you will receive from the bench, conscientiously and impartially render justice to the Country, and to the prisoner, for, gentlemen, we seek not the conviction of the accused, unless in the investigation you are about making, we bring home to your consciences the absolute impossibility of fulfilling the oaths you have severally taken by delivering any other verdict than that of guilty. I abstain from saying more on this topic, confident that it is unnecessary. I took the liberty of adverting to it to remind you, and thereby guard you, against the liability of permitting your judgment to be at all prepossessed, and also in the strongest manner to disclaim, on our parts, any wish relative to this trial, than that a true deliverance may be made between our sovereign Lord the King, and the prisoner at the bar, by a true verdict being given according to the evidence and according to that alone.—The testimony, gentlemen, which the officers of the Crown will lay before you in support of the accusation against the prisoner, is of a circumstantial nature. It is almost superfluous to say that in cases of murder it is almost impossible to exhibit at any time positive proof, but in the absence of that, gentlemen, we shall nevertheless, I fear, satisfy your minds, by a variety of circumstances of a very strong description, of the guilt of the prisoner. It will be necessary that I very briefly narrate to you the peculiar facts of the case, in order that your judgments may be assisted in the application of the testimony we shall have the honour to adduce before you. I mentioned to you, gentlemen, that the deceased, by name Owen Keveny, was in the service, or connected with, the Hudson's Bay Company. In the year 1816, it appears that he was conducting a number of engages of that Company towards their territory, and

was arrested at a place called Bas de la Rivière. There are, gentlemen, two lakes, between which runs the river Winnipic, the river upon which this murder, as is alleged, was committed, and Bas de la Rivière is a trading post at, as its name imports, the foot of the river Winnipic, at its junction with the lake of the same name. In the neighbourhood of this fort some of these people deserted him, in consequence of some dissatisfaction which existed, and, having made complaints against Mr. Keveny, for ill treatment, a warrant was issued against him by a Mr. Norman M'Leod, and given to De Reinhard to execute, in consequence of which he was arrested and sent to Fort William, so that he might be sent on to the gaol of Montreal to await his trial. It will be in evidence before you, that M'Lellan was at this time the partner in charge of the post at Bas de la Rivière, and that by his directions, Mr. Keveny was sent away in the care of five *Bois Brulés*, but that afterwards he was transferred to two Canadians, named Faye and La Pointe, who will be examined, and a savage, named José, commonly called in that country, where the Indians are accustomed to take distinguishing titles, "*Fils de la Perdrix Blanche*" or the white partridge. This lad, José, was sent with them as a guide, the Canadians being unacquainted with the language of the Indian tribes, and also ignorant of the way. From the testimony of Faye and La Pointe it will appear, that from this Indian, José, shewing a design and making attempts to kill Mr. Keveny, in which they prevented him, that a quarrel ensued, and they parted. It will be very material to recollect the conduct of the prisoner in a variety of situations, as from the coincidence of circumstances, I think it will be impossible to avoid saying the prisoner is guilty. At the time Mr. Keveny was arrested on the warrant of Mr. M'Leod, some

opposition was made by him, and very high language took place between him and De Reinhard. It will, I think, appear a singular circumstance, that M'Lellan, the very last time he was seen, should have left him in the company of the very persons who had executed that warrant, and who, from their previous quarrel, might be supposed to be his enemies; and this, it will be shewn to you in evidence took place after that in a general conversation, which M'Lellan did hear, (or, as he was in a situation to have heard, it will be for you to determine, whether he did or not,) the killing of Keveny by these two men was freely spoken of. The conduct of the prisoner at another time, will also furnish a strong circumstance against him, I allude to the time, when he fell in with the two Canadians, (of whom I have spoken before,) after their separation from José in consequence of the quarrel. Enquiring of these lads why they had beaten José, they told him that he had attempted to kill the prisoner, and that, having prevented him, he had first quarrelled with, and then left, them. To this M'Lellan answered, that it was none of their business, and flew into a violent passion, beating them with the perch of the canoe. He then took these men into his canoe, and proceeded in search of the deceased, who had been previously left on a small island from the Indian not permitting him to embark in the canoe with them. A conversation in this canoe will be proved to have taken place at this time, (which I think it will be impossible to say M'Lellan did not hear,) in which the killing of Keveny was so freely talked of, that his *butin* was divided. This conversation took place between the Half-Breeds upon receiving information from some canocs coming in a contrary direction, as to where Keveny was; they informed them, that they had seen his tent, "en

haut des Dalles," and a very remarkable conversation took place between the prisoner and those belonging to the brigade they met. M'Lellan enquired how he managed to live, and receiving for answer that sometimes he bought from the Savages, and sometimes he stole, he replied in this significant expression. "C'est bien, il ne volera pas plus long tems, demain a cette heures son affaire est finie." (1) after retaking Keveny, he proceeded on his way, leaving him to follow with De Reinhard, Mainville, and José, who were to conduct him to Fort William. M'Lellan went about three leagues and then encamped for the night, and it was between these two places, "en haut des Dalles," where Keveny was retaken, and the place of encampment, that the murder was committed. Some time after they had encamped, the small canoe which had been left for the others to follow in, arrived at the encampment, but Keveny was not there, the other three were, and what I think you will consider a circumstance well calculated to prove the charge we bring against the prisoner of harbouring the murderers, well knowing they had been guilty of the crime, is, that they brought with them the clothes of the deceased in a bloody state, and the canoe also was in a similar condition. Gentlemen, there are a variety of strong circumstances connected with the cause which, although, perhaps, they do not amount to that positive proof which on many charges the Crown are capable of bringing forward, yet, when the whole are combined, they form such a mass of evidence against the prisoner, that there can scarcely exist a doubt as to his guilt. Again, recollect his anxiety to retake the deceased, his apprehension that the young Canadians had let him escape, his anger at not finding him on the

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(1) 'Tis well, he will not steal any more, to-morrow at this hour his business is done.

island where they described he had been left, and is it not singular, after all this anxiety, that he did not take him with him in his own canoe, when he was bound to keep him safely, so as to hand him over to the laws of the country. It will be proved also, that at the time the canoe arrived without the deceased it excited no surprise in the prisoner, but that De Reinhard communicated the catastrophe to those who were standing by, saying, "s'affaire est bien faite, il est bien caché—il ne reviendra plus." <sup>(2)</sup> No difference was made in the deportment of the prisoner towards the murderer, they continued to live, to eat, to sleep, together. If it is alleged they could do no other in travelling in a canoe, yet certainly they could when encamped. The day after the arrival of the little canoe, as will also be shewn in evidence, a division of the *butin* of Mr. Keveny was made, and that the prisoner received a pair of boots, a loaf of white sugar, and all the papers belonging to him. Another very strong circumstance that will be testified to, is that Mr. Keveny, at the time he received his wound from the gun which Mainville discharged at him, fell upon the canoe which occasioned it to be very bloody. M'Lellan himself gave orders to destroy the canoe to the Indians, who burned it. A still more forcible circumstance will be exhibited in evidence, namely, that he forbid the people to speak of it, telling them at the same time that if publicity was given to it, the probability was they would suffer. It must also be remembered that all these persons were subordinate to the prisoner, that he was the partner in command, and, having the chief authority, was therefore capable of controuling the servants of the company. All these circumstances will be fully detailed to you by

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<sup>(2)</sup> His business is done, he is well hidden, he won't come back again.

a couple of voyagers in the service of the North West Company, named Faye and La Pointe. Another strong circumstance we shall prove to you by a witness named Heurtre. This witness has known the prisoner a long time, and his hand-writing. He will prove to you that a letter from the prisoner, addressed to Mr. M'Donell, who was then at Bas de la Riviere, come into his hands, in which were these words, written with a pencil, "Keveny has disappeared, don't be anxious about him." From the great anxiety there had been to recover Mr. Keveny, there can be little doubt, I think, but this letter must be applicable to his destruction. Their previous anxiety to send this man, Keveny, out of the country, which the taking of Fort William by Lord Selkirk prevented, fully justifies this construction. The state of the country at the time perhaps furnished the inducement to this horrid step, because, gentlemen, there must be an inducement to the commission of crime such as that of which De Reinhard has been convicted, and to which the prisoner is accused of being accessory. Mr. Keveny was a man of great intrepidity, well acquainted with the interest of the Company he served, and being a very active and persevering character, was likely to prove extremely valuable if any contest took place between these two Companies. The hearing that Lord Selkirk was proceeding up to the Indian Territory with a large force, and a knowledge that if Mr. Keveny reached Fort William he could furnish his Lordship with a great variety of useful information, was, in all probability, the inducement which led to the crime of murder being committed. That, however, you must be the judges of, but I think it not unreasonable, as there must have been some inducement to have led De Reinhard to commit the crime of which he has been convicted, to suppose



that this might be it, when we recollect the state of hostility existing between these two Companies. This supposition is strengthened by the circumstance that no degree of sorrow was manifested, no degree of regret was manifested, by the prisoner, or by any one that was with him at the time that his death must have been known by the division of his *butin*; on the contrary, it was considered as a thing very likely to take place. I shall proceed to lay before you the testimony of which I have given you an outline, and shall rely with perfect confidence that your verdict will be one strictly consonant to the oath you have taken of making a true deliverance between our Sovereign Lord the King and the prisoner at the bar.

WILLIAM BACHELOR COLTMAN *Esquire*,  
*sworn, and examined by the Attorney General.*

*Mr. Coltman.*—J'étois un commissaire et magistrat dans le Territoire Sauvage.<sup>(3)</sup> I was appointed a commissioner, in conjunction with Mr. Fletcher, to examine into the differences existing between the Hudson's Bay and the North West Companies. In consequence of that appointment, in the year 1817, I proceeded to Red River. The latter end of June in that year, I passed through the Lake of the Woods into the river Winnipic. I observed the course of that river, but not very minutely, but its general course was northerly. I did not take its course with a compass, for I unfortunately lost mine, but, according to my remarks, its course was northerly, a little inclined to the west, according to my idea. Its course was northerly, inclining to the west.—I have no doubt of that fact, though I took no scienti-

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<sup>(3)</sup> I was a commissioner and magistrate for the Indian Territory.

fic observation myself ; but I am satisfied that is its course.

*Chief Justice Sewell.*—There are various ways in which that point might be ascertained, as by maps, &c. or by acquired information. Mr. Coltman, observing its course as laid down, I suppose, saw nothing to lead him to conclude the maps incorrect.—It is laid down in the maps, is it not, Mr. Coltman, as having a northerly course, and in your personal observation, you saw nothing to conclude that its course was any other than a northerly course ?

*Mr. Coltman.*—No : its course was certainly northerly, inclining a little, as I think, to the west.

*Examination of Mr. Coltman, resumed by the Attorney General.*

*Mr. Coltman.*—I passed the Dalles twice in the year 1817.

*Attorney General.*—What distance are they from the mouth of the Lake of the Woods ?

*Chief Justice Sewell.*—You had, I think, better ascertain from Mr. Coltman, what distance they are from the beginning of this river—*which question being put by the Attorney General.*

*Mr. Coltman.*—From the beginning of the river Winnipic, that is at the Lake of the Woods, I should think the Dalles from twelve to perhaps twenty miles distant, but I can not speak with accuracy, as I have no other way of judging but from the time I took in passing to them. The spot called the Portage des Rats I always understood to be the most north western point of the Lake of the Woods. It was always represented to me as such, and from all that I saw or remarked it appeared to be so. A due west line drawn from the Portage des Rats would, as I think, entirely leave the whole of the river Winnipic to the north of it. It would, as I think, leave



the whole of it to the north, but I can speak with great confidence that by far the greater part must be so left.

*Attorney General.*—Allow me to ask you, Sir, if any part of the River Winipic should not be to the north of a due west line, whether that part would be the Dalles? Would such a line leave the Dalles to the north?

*Mr. Coltman.*—I have no doubt at all but the Dalles would be to the north of such a line. If any part of the River Winnipic is not to the north of such a line, it must be a very small part, but the Dalles I can have no doubt are to the north. I conceive the western boundary fixed by the statute, namely a line drawn due north from the junction of the Ohio and Mississippi Rivers, would leave the Dalles far to the west.

*Cross examination conducted by Mr. Stuart.*

*Mr. Coltman.*—I have no personal knowledge of the latitude and longitude of the junction of the Ohio and Mississippi rivers. My opinion is founded upon the universal report of geographers. I was never at the junction of these rivers, but I have been in Upper Canada. Fort William is at the head of Lake Superior. I have been there, and it is generally considered to be within the limits of the Province of Upper Canada.

*Mr. Stuart.*—Does not the ordinary process of a magistrate of Upper Canada issue for offences committed at Fort William?

*Mr. Coltman.*—It has been universally reputed that the King's process issued in Upper Canada is enforced there, and I believe it to be the case.

*Chief Justice Sewell.*—I do not think that a question which can be, with propriety, put to Mr. Coltman. The construction of the statute is with us,

and that being the case, the effect of a process at any particular spot must depend upon its latitude and longitude. That you may ascertain from Mr. Coltman, and then we will, if necessary, decide the point of jurisdiction.

*Mr. Stuart.*—Do you know the latitude and longitude of Fort William?

*Mr. Coltman.*—I do not think, or perhaps I ought to say I do not know, that the latitude and longitude of Fort William have ever been ascertained with sufficient accuracy to enable me to speak with certainty or confidence, but every account that I know of fixes it to the west of a line drawn north from the junction of the Ohio and Mississippi Rivers to the Hudson's Bay Territory. My knowledge of the latitude and longitude of the junction of the Ohio and Mississippi Rivers and of Fort William, is drawn from similar sources and of the same kind, but differing in degree, as more scientific persons have visited and ascertained the latitude and longitude of the junction of the rivers Ohio and Mississippi than that of Fort William.

JOSEPH BOUCHETTE JUNIOR, *sworn, and examined by the Attorney General.*

*Mr. Bouchette.*—I am Deputy Surveyor General of this Province.

*Chief Justice Sewell.*—The Deputy of the Surveyor General I imagine you mean, Sir?

*Mr. Bouchette.*—I am Deputy to my father, the Surveyor General of this Province. From different authors and maps, I am acquainted with the latitude and longitude of Portage des Rats. It is in 49° 39' North latitude, and 94° 5' Western longitude, calculating from the meridian of Greenwich.

*Chief Justice Sewell.*—Was you ever there, Sir?

*Mr. Bouchette.*—No; I never was, I have always considered the north west point of the Lake

of the Woods to be to the westward of Portage des Rats, and it is, according to maps, in  $49^{\circ} 58'$  north latitude, and in  $94^{\circ} 25'$  west longitude. The western boundary of Lower Canada is an astronomical line drawn from the junction of the Ohio and Mississippi Rivers, due north towards the Hudson's Bay Territory, in which course it would strike Lake Huron and leave the Lake of the Woods to the west of it.

*Chief Justice Sewell.*—How much to the west?

*Mr. Bouchette.*—About six degrees to the west. The general course of the Winnipeg is north, with about thirty degrees of west, and is all to the north of a line drawn due west from Portage des Rats.

*Cross examination conducted by Mr. Valliere de St. Real.*

*Mr. Bouchette.*—The latitude of Fort William is about  $48^{\circ} 16'$  North.—At that latitude the length of a degree of longitude is computed at about fifty five miles; that is to say about five miles shorter than at the equator. In saying on my examination in chief that my knowledge of the lines and latitudes and longitudes was gathered from maps, I referred to the map of North America by Arrowsmith of London, and the map of my father, the Surveyor General. I have no knowledge that my father was ever higher up the country than Niagara, nor have I any reason to believe he ever was, indeed I do not think he ever was, in the Indian Territory.

*Solicitor General.*—You, I suppose, do not know whether he has been or not into the Indian Territory?

*Mr. Valliere de St. Real.*—Have you not, in conversation on this subject, heard the Surveyor General say he had never been there, or did he ever say that he had been there?

*Mr. Bouchette.*—Certainly I never heard him say that he had been there, but I have not noticed his ever saying he had not been there; but I do not think my father was ever higher than Niagara. I can not tell whether Bouchette's map was made from Arrowsmith's, or if they exactly agree in those parts relative to my evidence. I have not particularly consulted any other maps on the subject. I am not a sworn surveyor. I am eighteen years old.

**HUBERT FAYE** *sworn, and examined by the Solicitor General:*

*Faye.*—En 1816 J'étois au service de la Compagnie du Nord Ouest, et vers la fin de l'été j'ai parti du Lac la Pluie dans un canot commandé par Mons. M'Donell et Mons. Cadotte, pour aller au Bas de la Rivière. Mons. M'Donell étoit bourgeois, et Mons. Cadotte un commis, de la Compagnie du Nord Ouest. La quatrième journée nous rencontrâmes deux petits canôts montant la rivière, et dans un des canots il y avoit un prisonnier et cinq *Metifs*. Je n'avois pas connoissance du prisonnier au tems, mais il étoit un blanc, et je l'ai entendu nommer Keveny. Mons. M'Donell lui a parlé, et a dejeuné avec lui, et ensuite il donnoit des ordres à moi, à un nommé La Pointe, et à un Sauvage nommé José Fils de la Perdrix Blanche, de prendre charge du prisonnier, et l'amener au Lac la Pluie. Le Sauvage avoit un fusil, et j'ai demandé un de Mons. M'Donell, mais il m'a refusé. La Pointe n'étoit pas armé. Nous partîmes ensemble avec le prisonnier en charge. (\*)

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(\*) In 1816 I was in the service of the North West Company, and towards the end of the summer, I left Lake La Pluie in a canoe under the command of Mr. Macdonell and Mr. Cadotte, to go to Bas de la Riviere. Mr. Macdonell was a partner, and Mr. Cadotte a clerk, of the North West Company. On the fourth

*Solicitor General.*—I am now about putting a question about which as there may be some doubts, I will state its nature and object in English, that the mind of this witness may not be exposed to prejudice. My object is to prove that at this time there existed a manifest intention to kill this unfortunate man.

*Chief Justice Sewell.*—What has that to do with the prisoner at the bar, whose name even is not yet mentioned.

*Solicitor General.*—We will bring it home to the prisoner after. Though M'Donell may be said to be now *hors du combat*, and the evidence we have given may not appear to apply, we shall incontestibly connect the whole of the circumstances and the prisoner with them. At this moment the prisoner (Keveny) is delivered up to this party who take him in charge, and we shall shew that they afterwards met the prisoner at the bar, and that shortly after meeting him, Keveny was taken out of the custody of these persons, and handed over to his murderers. Eventually we shall connect these two branches of the testimony, and distinctly connect the prisoner with both pieces of the evidence. Indeed, unless permitted to take this course of laying every thing before the jury in the order of time in which they occurred, I fear the evidence will appear confused.

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day, we met two small canoes ascending the river, and in one of the canoes there was a prisoner and five *Metifs*. I had not, at that time, any knowledge of the prisoner, but he was a white man, and I heard him called Keveny. Mr. Macdonell conversed with him, and breakfasted with him, and afterwards he gave orders to me, to one named La Pointe, and to an Indian of the name of Joseph, son of the White Partridge, to take charge of the prisoner, and carry him to Lake La Pluie. The Indian had a gun, and I asked Mr. Macdonell for one, but he refused it. La Pointe was not armed. We set off together having the prisoner in charge.

*Chief Justice Sewell.*—I do not for a moment insinuate that you would do any thing wrong, Mr. Solicitor, but it is really a pity to lose time by attempting to go into an examination of circumstances with which the prisoner is not shewn to have the slightest connection. It certainly is reviving the course objected to on the late trial, and which was then declared to be inadmissible. Connect the prisoner with transactions you propose to make evidence against him.

*Examination resumed by the Solicitor General.*

*Faye.*—Nous partîmes avec Keveny, et après, en conséquence de chicane entre José et lui, nous l'avons laissé sur une isle, parceque le Sauvage, qui étoit notre guide, ne vouloit plus l'embarquer. Ensuite nous avons rembarqué, et quelques jours après, il y avoit une querelle entre La Pointe et José, et ils se battoient ensemble, et José nous a quitté. J'étois avec La Pointe en recherche de Keveny, mais ne le trouvant pas, et ne sachant le chemin, nous avons débarqué sur une petite isle, pour attendre des canots. La cinquième journée nous avons vu un canot approcher, et dans ce canôt il y avoit Mons. Archy, (le prisonnier à la barre,) Mons. Cadotte, Mons. Grant, Mons. De Reinhard avec sept *metis*. José le Sauvage étoit là—Mons. Archy commandoit le canot, comme on m'a dit, et d'après ce que j'ai vu. Je n'ai pas entendu autre que Mons. M'Lellan donner des ordres. Mons. Archy est un associé de la Compagnie du Nord Ouest, et il y avoit deux ou trois commis avec lui. Mons. Archy a débarqué et m'a attaqué, et m'a donné des coups de baton, mais je ne sais pas pourquoi. (\*)

(\*) We set off with Keveny, and afterwards, in consequence of disagreements between Joseph and him, we left him on an

*Mr. Valliere de St. Real.*—I beg that may be taken down.

*Chief Justice Sewell.*—Vous ne savez pas pourquoi ?

*Faye.*—Je ne sais pas pourquoi. Mons. Cadotte m'a demandé, "qu'avez vous fait avec le Sauvage ?" et j'ai répondu qu'ils se battoient ensemble, et le Sauvage se sauva dans les bois. Cadotte ensuite m'a demandé pourquoi j'ai battu le Sauvage, et je l'ai dit que c'étoit La Pointe qui l'avoit battu et que le Sauvage se sauva dans les bois. Après nous avons embarqué dans le canot pour aller chercher Keveny, et j'ai raconté dans le canot, et aussi à terre, ce que s'étoit passé. Je l'ai raconté à tous ceux qui pouvoient m'entendre, et nous étions tous ensemble, et Mons. Archy y étoit dans le canot et à terre, mais je ne sais pas s'il m'a entendu ou non. Mons. M'Lellan m'a parlé, mais je ne me souviens pas ce qu'il a dit. J'ai raconté tout ce qui s'étoit passé entre le Sauvage et nous, et que le Sauvage voulut tuer Keveny. Je ne me rappelle pas ce que M'Lellan a dit. Je ne connois pas s'il étoit content. C'étoit avant de lui avoir raconté cela, qu'il nous avoit battu. Il ne paroissoit pas en colère contre le Sauvage. Je ne puis pas dire s'il étoit fâché contre lui ou non, par-

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island, because the Indian, who was our guide, would not let him embark again. We then re-embarked, and a few days afterwards, a quarrel occurred between La Pointe and Joseph, and they fought, and Joseph left us. I went with La Pointe in search of Keveny, but not finding him, and not knowing the way, we landed on a small island to wait for canoes. On the fifth day we saw a canoe coming, and in that canoe were Mr. Archy, (the prisoner at the bar) Mr. Cadotte, Mr. Grant, Mr. De Reinhard, with seven *metis*. Joseph the Indian was there. Mr. Archy commanded the canoe, as I was told, and according to what I saw. I heard no body but Mr. M'Lellan give any orders. Mr. Archy is a partner of the North West Company, and he had two or three clerks with him. Mr. Archy landed, and attacked me, and beat me with a stick, but I do not know for why.

ceque je ne l'ai jamais vu auparavant. Ensuite nous nous sommes tous embarqués, M'Lellan avec les autres, dans le canot. Le lendemain nous avons rencontré cinq ou six canots, par qui nous avons appris que Mons. Keveny étoit plus loin en haut des Dalles dans la rivière Winnipic, et après nous avons trouvé Keveny à l'endroit. Je ne connois pas si c'étoit Mons. Ducharme, mais quelqu'un a demandé des geus des canots, comment Keveny fesoit pour vivre, mais je ne sais pas si Mons. Archy l'a entendu. Nous avons parlé tous ensemble, et quelqu'un a demandé, comment fait il pour vivre, et quelqu'un repondoit, que quelquefois il voloît des Sauvages, et quelquefois il achetoit. Je ne sais pas en quelle partie du canot M'Lellan étoit à ce moment. Je ne sais pas que M'Lellan a entendu cette conversation. Je ne puis pas dire. M'Lellan étoit plus proche que moi et je l'ai entendu bien. J'étois un peu plus loin que Mons. Archy. Je ne parlois pas alors et dans ce moment je n'ai entendu aucune replique à cette reponse. Je l'ai entendu bien mais je ne sais pas si M'Lellan l'a entendu ou non, mais certainement il étoit plus proche que moi. (")

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(\*) I do not know for why. Mr. Cadotte asked me, "what have you done with the Indian?" and I answered him that they had fought together, and the Indian ran away into the woods. Cadotte then asked me why I had beat the Indian, and I told him, that it was La Pointe who had beat him, and that the Indian ran away into the woods. We then embarked in the canoe to go in search of Keveny, and I related, both in the canoe, and on shore, what had happened. I related it to all who could hear me, and we were all together, and Mr. Archy was there, in the canoe, and on shore, but I do not know whether he heard me or not. Mr. M'Lellan spoke to me, but I do not recollect what he said. I related all that had occurred between the Indian and us, and that the Indian wanted to kill Keveny. I do not remember what Mr. M'Lellan said. I do not know whether he was pleased. It was before telling him that, that he beat us. He did not appear to be angry with the Indian. I can not say whether he was angry with him or not, because I never saw him before. Afterwards we all



*Mr. Stuart.*—All this goes for nothing, I presume, till my learned friends shew that Mr. M'Lellan took part in this conversation. I imagine your honour will not put it on your notes.

*Solicitor General.*—I contend that it ought to be taken down. The witness goes the utmost length any man desirous of speaking the truth can do. It is impossible for him to say that sound went into a person's ears, but he proves that he might have heard, by proving he was in a situation where it was almost impossible but he must have heard.

*Chief Justice Sewell.*—I do not think that is so clear, for he does not even know in what part of the canoe Mr. M'Lellan was sitting.

*Solicitor General.*—But does not your honour think that, as he was in the canoe, it is reasonable to infer he must have heard what passed.

*Mr. Stuart.*—And suppose he did, is that to convict a person of being an accessory to the crime of murder? Am I, or any spectator, for example, to be made responsible for all we might hear pass even in this Court? Or, I would ask, must it unquestionably follow that because a person is near enough to

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embarked, M'Lellan with the others, in the canoe. The next day we met five or six canoes by which we learnt that Mr. Keveny was farther on, above the Dalles in the river Winnipic, and afterwards we found Keveny at the place. I do not know whether it was Mr. Ducharme, but somebody asked the people of the canoes, how Keveny managed for his living, but I do not know whether Mr. Archy heard it. We were all talking together, and somebody asked, "how does he manage for his living?" and some one answered, sometimes he stole from the Indians, and sometimes he bought. I do not know in what part of the canoe M'Lellan was at that time. I do not know that M'Lellan heard this conversation. I can not say. M'Lellan was nearer than I was, and I heard it very well. I was a little farther off than Mr. Archy. I was not then speaking, and at that time I heard no reply given to this answer. I heard it very well, but I do not know whether M'Lellan heard it or not, but certainly he was nearer than I was.

attend to a conversation, that he actually does so attend?

*Examination resumed by the Solicitor General.*

*Faye.*—Dans ce tems je n'ai entendu aucune reponse, mais après, et au tems que nous étions dedans le canot, j'ai entendu quelque personne dire, "il ne mangera pas long tems." Je ne sais pas en quelle partie du canot la personne étoit, ou si M'Lellan l'a entendu. (')

*Chief Justice Sewell.*—I should be sorry to reject one tittle of evidence that ought to go to the jury, but really I can not see how this is to bear against the prisoner at the bar.

*Mr. Stuart.*—In producing their case, my learned friends make some omissions which are exceedingly important when facts are exhibited, namely, the time and place where they occurred. But, supposing they were supplied, still my learned friends must go considerably farther, and prove, not only the presence of Mr. M'Lellan, but a participation and approval of what was going on. This must form the substratum, that M'Lellan was present, and heard, participated in, and approved of what passed.

*Chief Justice Sewell.*—We had this difficulty on the last, and also on the former trials, and we then decided that evidence could not be accepted of conversations which it was not proved the prisoner participated in, or approved. In the present case we do not see how this is to be brought home to M'Lellan. You prove no participation; he does not say a word, nor does the witness know whether he even heard a word. This man gives so imperfect

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(') At that time I did not hear any answer, but afterwards, and whilst we were in the canoe, I heard some person say "he will not eat a long while." I do not know in what part of the canoe the person was who said so, nor whether M'Lellan heard it.

a narrative, that I really do not see what is to be made of it. He does not know where the persons were who held the conversation, whether behind or before him ; he does not know who they were, in fact he appears to know nothing, but that they were all in a canoe, and that he heard what passed. It would be highly dangerous to admit as evidence that which is not clearly brought home to a prisoner, and you certainly have not brought this conversation home so as to make it evidence against M'Lellan. If you can shew he was in a situation near enough to have heard, in the common course of things, it is a fact you may prove, but even then I do not think much could proceed from it, for though thus situated, he might not hear.

*Solicitor General.*—I consider that is to go the length of saying that a witness must swear that a man positively hears a thing ; that I consider to be impracticable.

*Examination continued.*

*Faye.*—Je pense que l'homme qui parloit étoit par devant moi. Je ne sais pas si M'Lellan étoit devant moi, ou en arrière. Je ne puis pas dire s'il parloit haut, ou comme je parle actuellement. (\*)

*Chief Justice Sewell.*—It comes again exactly to what he has said twice before. You perceive he will not fix the place, or whether the person spoke loud or not. Can such evidence bear against a prisoner ?

*Examination resumed by the Solicitor General.*

*Faye.*—J'ai entendu quelqu'un dire, mais je ne sais pas qui l'a dit, qu'il ne mangeroit pas long tems.

(\*) I think that the man who spoke was before me. I do not know whether M'Lellan was before me or behind me. I can not say whether he spoke loud, or as I am speaking now.

Il disoit que le prisonnier ne mangeroit pas long tems. Je pensois qu'il parloit de Keveny. Le canot marchoit au tems, et j'étois dedans, au derrière du canot. Celui qui a dit cela étoit par devant moi dans le canot.

*Chief Justice Sewell.*—Où ; en quelle partie ?

*Faye.*—Je ne sais pas. Mons. M'Lellan étoit dans le canot au même tems, mais je ne sais pas s'il étoit plus près de cette personne que moi ou non. Les associés et commis ordinairement se tiennent dans le milieu du canot. Mons. M'Lellan étoit au milieu, un peu en avant.

*Chief Justice Sewell.*—Comment parloit il ? parloit il fort ?

*Faye.*—Il parloit assez fort pour moi l'entendre. Il parloit comme je parle à present. La personne qui parloit étoit par devant moi. Les associés et commis étoient dans le milieu. J'étois en arriere.

*Solicitor General.*—Donc celui qui parloit se trouvoit entre vous et les bourgeois ?

*Faye.*—Je ne sais pas. (°)

*Chief Justice Sewell.*—What can you make of all this ?

(°) I heard some one say, but I do not know who it was said so, "that he would not eat a long while." He said that the prisoner would not eat a long while. I believe he spoke of Keveny. The person that said so was before me in the canoe.

C. J. S.—Where ? in what part ?

H. F.—I do not know. Mr. M'Lellan was in the canoe at the same time, but I do not know whether or not he was nearer to that person than I was. The partners and clerks are generally in the middle of the canoe. Mr. M'Lellan was in the middle, a little towards the forepart.

C. J. S.—How did he speak ? Did he speak loud ?

H. F.—He spoke loud enough for me to hear him. He spoke as I do at present. The person that spoke was before me. The partners and clerks were in the middle. I was behind.

S. G.—The one that spoke was consequently between you and the gentlemen (bourgeois) ?

H. F.—I do not know.

*Faye.*—Nous avons trouvé Keveny campé avec des Sauvages, mais je ne sais pas. Mons. M'Lellan ne l'a pas pris dans son canot. Il a dit qu'il ne le laisseroit pas entrer dans son canot. <sup>(10)</sup>

*Chief Justice Sewell.*—I wish before we go on, to clearly understand whether M'Lellan said any thing, and what, at the time of the expression, "il ne mangera pas long tems." *The Solicitor General accordingly put a question founded on his honour's remark.*

*Faye.*—Je ne sais pas. Je ne sais si M'Lellan a parlé alors. Au tems que nous avons laissé Keveny il est resté avec Charles de Reinhard, un nommé Mainville (je ne sais pas son nom de baptême) et José, ou Perdrix Blanche, pour nous suivre dans un canot que les Sauvages gomboient alors.

*Solicitor General.*—Avez vous entendu des menaces contre Keveny?

*Faye.*—J'ai entendu des menaces de Charles de Reinhard. <sup>(11)</sup>

*Mr. Stuart.*—I do trust the learned Solicitor General is not endeavouring again to make us accountable for any one's conduct but our own. I object to the last question, upon the principle already so frequently recognized by your honours.

*Chief Justice Sewell.*—You must, Mr. Solicitor, first connect these people by some act before you

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<sup>(10)</sup> We found Keveny encamped with the Indians, but I do not know. Mr. M'Lellan did not take him into his canoe. He said he would not let him get into his canoe.

<sup>(11)</sup> H. F.—I do not know. I do not know whether M'Lellan spoke then. At the time we left Keveny, he remained with Charles de Reinhard, one named Mainville, (I do not know his christian name,) and Joseph, or White Partridge, to follow us in a canoe which the Indians were then gumming.

S. G.—Did you hear any threats against Keveny?

H. F.—I heard a threat of Charles de Reinhard's.

can possibly be permitted to proceed in the course I suppose you are about pursuing.

*Faye.*—Mons. M'Lellan étoit dans le canot, et plus proche de Reinhard que moi, quand je l'ai entendu dire, avant d'arriver où étoit Keveny, "c'étoit moi qui l'a pris prisonnier, et je n'aurai soin." Mons. M'Lellan étoit près de lui, et j'étois plus loin, mais je l'ai bien entendu. On travailloit, et j'ai entendu les Metifs parler de son butin. Mainville disoit, "je prendrai ses bottes quand on l'aura tué;" un autre disoit qu'il auroit son chapeau. Ils étoient proche de moi, et parloient comme je parle à ce tems ci. <sup>(12)</sup>

*Chief Justice Sewell.*—Gentlemen of the jury, will you please to remark his tone of voice.

*Faye.*—M'Lellan étoit dans le canot en avant, à la distance de la longueur de la table, (des officiers de la couronne) c'étoit un canot du Nord. Le canot marchoit dans le tems, et nous étions dix qui nageoient.

*Chief Justice Sewell.*—A votre connoissance, sur votre serment, M'Lellan a-t-il entendu ou non?

*Faye.*—Je ne sais pas si Mons. Archy l'a entendu ou non.

*Chief Justice Sewell.*—A-t-il parlé, ou non?

*Faye.*—Je ne sais pas. Je ne l'ai pas entendu parler. <sup>(15)</sup>

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<sup>(12)</sup> Mr. M'Lellan was in the canoe and nearer to de Reinhard than I was, when I heard him say, before coming to the place where Keveny was, "it was I who took him prisoner, and I will not take care." Mr. M'Lellan was near him, and I was farther off, but I heard it. We were working, and I heard the half breed speaking of his things. Mainville said, "I will take his boots when he has been killed." Another said that he would have his hat. They were near to me, and spoke as I do at this time.

<sup>(13)</sup> H. F.—M'Lellan was in the canoe, in front, at the distance of the length of the table (that of the crown-officers.) It was a north canoe. The canoe was under way at the time, and there were ten of us a paddling.

*Mr. Stuart.*—Then I consider the whole of this evidence liable to the objection we have before made, and which the Court held to be valid.

*Chief Justice Sewell.*—It rests with the jury to give what credit they think proper to the evidence, and also to say whether he did or did not hear. The Crown has merely proved that he was in the canoe.

It being now half past one o'clock, the Court will adjourn, for half an hour, to allow the jury to take the refreshment which is prepared for them.

*The Court was accordingly adjourned.*

AFTERNOON,

*The jury being called over and all present, the examination of Hubert Faye was resumed by the Solicitor General.*

*Faye.*—Laissant Keveny, là dessus nous avons continué notre route, environ trois lieues, quand nous avons débarqué. Le soleil n'étoit pas encore couché, et alors nous avons resté pour la nuit. Après être campé, j'ai entendu un coup de fusil. J'étois alors à terre, mais je ne sais pas où étoit Mons. M'Lellan. J'ai entendu un nommé Desmarais dire, "oh les chiens l'ont tué." (14)

*Mr. Valliere de St. Real.*—That can not be evidence what Desmarais said. Only the hearing of a

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C. J. S.—To your knowledge, upon your oath, did M'Lellan hear or not?

H. F.—I do not know whether Mr. Archy heard it or not.

C. J. S.—Did he speak, or did he not?

H. F.—I do not know; I did not hear him speak.

(14) Leaving Keveny, thereupon we continued our route about three leagues, when we landed. The sun was not set, and then we stopped for the night. After being encamped I heard the report of a gun. I was then on shore, but I do not know where Mr. M'Lellan was. I heard one named Desmarais say, "oh, the dogs have killed him."

"coup de fusil" (no very extraordinary event in a country whose inhabitants live by the chase) can be received in evidence. A fact it certainly is, but not one from which I apprehend my learned friends expect to make much.

*Examination resumed by the Solicitor General.*

*Faye.*—Ensuite j'ai vu le canot de De Reinhard qui venoit, mais Mons. Keveny n'étoit pas dedans. Mons. Archy et quatre autres ont couru au bord de l'eau, et on demandoit; "qu'avez vous fait avec le prisonnier," et quelqu'un dans le canot, (mais je ne puis pas dire qui,) a répondu, "il est mort;" je n'entendois pas si M'Lellan a dit rien, il étoit alors plus loin que moi; il n'a paru ni content, ni fâché, mais je ne l'ai entendu rien dire. De Reinhard a débarqué, mais je ne sais pas s'il a raconté les circonstances de sa mort. Mainville les a raconté. <sup>(15)</sup>

*Mr. Vallière de St. Real.*—The Solicitor General surely does not intend to offer Mainville's story of what happened when M'Lellan was not present, as evidence against him.

*Chief Justice Sewell.*—That will not do certainly, unless M'Lellan was by and participating in the conversation, or it was proved that the facts came subsequently to his knowledge.

*Examination resumed by the Solicitor General.*

*Faye.*—Mainville les a raconté au soir, mais les bourgeois n'étoient pas avec nous. Ils n'étoient pas

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<sup>(15)</sup> Afterwards I saw De Reinhard's canoe a coming, but Mr. Keveny was not in it. Mr. Archy and four others ran to the water side, and it was asked, "what have you done with the prisoner," and some one in the canoe, (but I can not say who,) answered, "he is dead." I did not hear whether Mr. M'Lellan said nothing, he was then farther off than I was; he did not appear either pleased or vexed, but I did not hear him say any thing. De Reinhard landed, but I do not know that he related the circumstances of his death. Mainville related them.



avec les engagés mais un peu plus loin, et Mons. M'Lellan n'y étoit pas avec nous, mais avec les bourgeois. J'ai vu débarquer le butin de Keveny, et j'ai vu que de Reinhard avoit les clefs de son coffre et de ses valises, mais je ne sais pas si M'Lellan les a vu. Certainement il étoit assez proche pour les avoir vu, s'il avoit regardé. Il y avoit une valise avec des papiers, laquelle de Reinhard ouvroit, et, examinant les papiers, il les jettoit dans la tente des bourgeois, où M'Lellan restoit. Mons. M'Lellan les a lu, les a déchiré et brûlé. Je suis sûr qu'ils étoient les papiers hors de la valise de Keveny que Mons. M'Lellan a lu, déchiré, et brûlé. Je les ai vu, mais je ne les pouvois pas lire. De Reinhard a gardé les bottes de Keveny, et il y avoit aussi un pain de sucre blanc qui l'appartint, qu'il (de Reinhard) a mis, et je l'ai vu, dans le panier de Mons. Archy. Il avoit voulu y mettre avant du thé qui appartint à Keveny, mais M'Lellan l'empêchoit, disant en même tems qu'il n'avoit pas besoin de cela. Je ne sais pas si M'Lellan l'a aperçu quand il y a mis le sucre. Le lendemain nous nous sommes rembarqués, et Mons. M'Lellan a encore lu des papiers, et les a déchiré, mais je ne puis pas dire s'ils étoient ceux de Keveny. Avant de partir j'ai entendu Mons. Archy dire, de mettre le petit canot en feu, qui avoit été laissé pour De Reinhard et Keveny, mais je ne savois pas pourquoi. Il y avoit beaucoup de sang dans le canot, mais je ne sais pas, et il n'a pas dit, pourquoi il falloit le brûler. Avant d'embarquer, au bord de l'eau, j'ai reçu des ordres de ne pas parler de la mort de Keveny. C'étoit De Reinhard qui m'a défendu de parler de cela, et je lui ai promis que je n'en parlerois pas, mais je ne sais pas que M'Lellan étoit là dans ce moment. <sup>(16)</sup>

(16) Mainville related them in the evening, but the gentlemen (bourgeois) were not with us. They were not with the servants

*Mr. Stuart.*—I trust your honour will observe that it was to De Reinhard only that he promised not to speak of the death of Keveny.

*Chief Justice Sewell.*—De Reinhard ; qu'est ce qu'il vous a dit, ou défendu ?

*Faye.*—Il m'a défendu de parler de cette affaire là, et je lui ai dit que je n'en parlerois pas. (17)

*Examination resumed by the Solicitor General.*

*Faye.*—Je ne sais pas si M'Lellan et De Reinhard se sont rencontrés comme des amis. Je ne sais pas comment M'Lellan a reçu De Reinhard, mais ils

(engagés) but a little farther, and Mr. M'Lellan was not there with us, but with the bourgeois. I saw Keveny's things landed, and I saw De Reinhard have the keys to his box and trunks, but I do not know that M'Lellan saw them. Certainly he was near enough to have seen them, if he had looked. There was a trunk with papers, which De Reinhard opened, and, examining the papers, threw them into the tent of the bourgeois, where M'Lellan stayed. Mr. M'Lellan read them, and tore and burnt them. I am certain that they were the papers out of Keveny's trunk, which Mr. M'Lellan read, tore, and burnt. I saw them, but I could not read them. De Reinhard kept Keveny's boots, and there was likewise a loaf of white sugar that belonged to him, which he, De Reinhard, put, and I saw it, into Mr. Archy's basket. Before that he wanted to put some tea in, which belonged to Keveny, but M'Lellan prevented him, saying he had no occasion for that. I do not know whether M'Lellan perceived it when he put the sugar in. We re-embarked the next day, and Mr. M'Lellan read more papers and tore them ; but I can not say whether they were Keveny's. Before we went, I heard Mr. Archy tell, to burn the small canoe which had been left behind for De Reinhard and Keveny, but I do not know for what. There was a great deal of blood in the canoe, but I do not know, and he did not say, why it was to be burnt. Before embarking, at the waterside, I received orders not to speak of the death of Keveny. It was De Reinhard who forbade me to speak of that, and I promised him that I would say nothing about it ; but I do not know that M'Lellan was there at that moment.

(17) *C. J. S.*—De Reinhard ; what was it that he said to you, or what did he forbid you ?

*H. F.*—He forbade me to speak of that business ; and I told him that I would say nothing about it.

ont mangé ensemble. Ils voyagoient ensemble, et n'ont pas disputé, et ont resté ensemble dans le milieu du canot, comme à l'ordinaire, dans la barre des bourgeois. Ce soirée je me suis couché avant les autres, et je ne sais s'ils couchoient ensemble. Quand il fesoit beau, on ne montoit pas la tente, et chacun couchoit de son bord. <sup>(18)</sup>

*Cross examination conducted by Mr. Stuart.*

*Faye.*—Quand Mons. M'Donell a rencontré Keveny il l'a traité amicalement, et ils ont djeuné ensemble. Mons. M'Donell l'a donné une bouteille de vin et une bouteille de rum. Je me rappelle que j'ai dit qu'il y avoit une querelle entre La Pointe et la Sauvage, et José ne parloit pas François. C'est la coutume de ce pays pour tous les Sauvages d'avoir des armes. Ce n'est pas le façon dans les canots alleges, pour les bourgeois et les engagés de parler ensemble ; ni pour les hommes de parler l'un avec l'autre, et ce canot de Mons. M'Lellan étoit un de l'espèce qu'on appelle *allege*. Les bourgeois et les engagés chacuns parlent entre eux dans leur barre. Je parle, par exemple, avec mon camarade et les autres chacun avec son camarade, et ce n'est pas la façon de s'occuper de ce que les autres disent. Nager dans un canot est ouvrage assez dur, et fait du bruit. C'est la façon de chanter quelquefois dans les canots. Il y avoit cinq ou six canots que nous avons rencontré, chaque avoit six ou sept hommes. Les bourgeois et les engagés ne couchent pas

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(18) I do not know whether M'Lellan and De Reinhard met as if they were friends. I do not know how M'Lellan received De Reinhard, but they eat together. They voyaged together, and did not quarrel, and they remained together in the middle of the canoe, as usual, in the bar of the bourgeois. That evening I went to bed before the others, and I do not know whether they slept together. When the weather was fine, the tent was not pitched, and every one lay down where he liked.

ensemble, et je ne sais pas que De Reinhard couchoit avec les bourgeois cette soirée. Il voyageoit en la meine barre du canot comme auparavant. <sup>(19)</sup>

*Solicitor General.*—I wish that taken down.

*Mr. Stuart.*—I am now going to ask him a question, his answer to which may lessen my learned friend's anxiety on the subject. I shall ask him whether there was any other place in the canoe where he could go. The state of the country and the mode of travelling, must be taken into consideration, and then a great deal of what the crown officers rely upon, as proving their case, will be satisfactorily accounted for. It is very different, travelling in a canoe from sailing in a vessel which has its cabin, state rooms, and accommodations, according to the rank and situation of its passengers. Living in this wild country, where there is no habitation but the hut of the Indian, the cabin of the Savage, is widely different from enjoying the comforts and conveniences civilization affords. Here necessity

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<sup>(19)</sup> When Mr. M'Donell met Keveny, he treated him in a friendly way, and they breakfasted together. Mr. M'Donell gave him a bottle of wine and a bottle of rum. I recollect that I said that there had been a quarrel between La Pointe and the Indian, and Joseph could not speak French. It is customary in that country for the Indians to have arms. It is not the mode in light canoes for the gentlemen (bourgeois) and servants (engagés) to converse together, nor for the men to speak to each other, and this canoe of Mr. M'Lellan was one of the kind which is called light (allege.) The bourgeois and the engagés converse respectively each amongst themselves in their bars. For instance, I talk to my comrade, and the others each to his comrade, and it is not usual to mind what the others say. Paddling in a canoe is hard enough work, and makes a noise. It is the custom sometimes to change places in the canoes. There were five or six canoes that we met with, each had six or seven men. The bourgeois and the engagés do not sleep together, and I do not know that De Reinhard slept with the bourgeois that night. He voyaged in the same bar of the canoe as before.

compels the association of all ranks of persons engaged in traffic. *Mr. Stuart, having put a question founded on this position.*

*Faye.*—Oui, c'étoit necessaire que De Reinhard restoit dans la barre avec les bourgeois parcequ'il ne pouvoit nager, et il n'y a pas de place entre les voyageurs. Les commis et les bourgeois mangeoient toujours ensemble, et De Reinhard mangeoit au meme tems que M'Lellan, mais il n'y avoit pas une table. Aux repas ils se mettent en cercle, et les bourgeois et commis mangent ensemble. Campés, les commis sont comme les bourgeois, ils ont les memes tentes et le meme feu. Lorsque le canot de De Reinhard arriva chez nous, un coup de fusil avoit été tiré sur une outarde ; c'est moi qui l'a plumé. <sup>(20)</sup>

*Mr. Stuart.*—I wish, that to be taken down.

C'étoit necessaire, je crois, que M'Lellan prenoit De Reinhard avec lui, parceque c'est difficile pour un homme seul de faire son vivre dans ce pays là ?

*Faye.*—M'Lellan ne pouvoit pas laisser De Reinhard en cet endroit ; il y seroit mort. Il seroit mort de faim. Il y<sup>2</sup> avoit ordinairement huit engagés avec les bourgeois dans un canot de cette espece, mais en partant des Dalles nous étions quinze. Il y avoit ordinairement trois ou quatre bourgeois, quelquefois mais un seul. J'ai entendu M'Lellan dire qu'il ne prendroit pas Keveny dans son canot

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<sup>(20)</sup> Yes, it was requisite for De Reinhard to remain in the bar with the bourgeois, because he could not paddle, and there was no room among the voyageurs. The clerks and partners always took their meals together, and De Reinhard took his at the same time as M'Lellan, but there was no table. At meals they sit in a circle, and the partners and clerks eat together. When encamped, the clerks are the same as the partners, they have the same tents and the same fire. When De Reinhard's canoe came where we were, a shot fired from a gun had killed a bustard : it was I who plucked it.

parceque c'étoit déjà trop chargé. Nous avons pris deux ou trois morceaux du butin de Keveny dans le canot avec Mons. M'Lellan, mais je ne me rappelle de quel espèce. Les papiers étoient dans une boîte ou bureau portatif à écrire. Mons. M'Lellan avoit les papiers à lire que j'avois vu auparavant. Je ne pouvois pas distinguer les papiers de Mons. Keveny d'avec ceux de M'Lellan.

*Mr. Stuart.*—Non plus d'avec ceux sur la table ?

*Faye.*—Non je ne pouvois pas. <sup>(21)</sup>

*Mr. Stuart.*—I wish that taken down, that he could not distinguish Keveny's papers from M'Lellan's, nor from the papers before us.

*Faye.*—J'ai été pris prisonnier dans l'entrée de la rivière La Croix, et La Pointe aussi, par Capitaine D'Orsonnens, qui nous a questionné, et amené au Lac la Pluie.

*Chief Justice Sewell.*—Comme prisonnier ou témoin ?

*Faye.*—Dans ce moment, je ne savois pas pourquoi, mais j'étois pris par Capitaine D'Orsonnens. J'étois examiné par Capitaine Matthey et un autre, mais je ne me rappelle pas son nom, et le lendemain nous

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(<sup>21</sup>) *Mr. S.*—It was necessary, I believe, that M'Lellan should take De Reinhard with him, because it is difficult for a man by himself to subsist in that country ?

*H. F.*—M'Lellan could not leave De Reinhard in that place. He would have died. He would have been starved to death. There were generally eight engagés with the bourgeois in a canoe of that kind, but when we left the Dalles there were fifteen of us. I heard M'Lellan say that he would not take Keveny in his canoe, because it was already too much loaded. We took two or three pieces of Keveny's baggage in the canoe with Mr. M'Lellan, but I do not recollect what they were. The papers were in a portable writing box or desk. Mr. M'Lellan was reading the papers which I had before seen. I can neither write nor read. I could not distinguish Mr. Keveny's papers from M'Lellan's.

*Mr. S.*—Nor from those on the table ?

*H. F.*—No, I could not.

étions menés devant mi Lord Selkirk, qui nous a fait prêter serment. <sup>(22)</sup>

**JEAN BAPTISTE LA POINTE**, *sworn, and examined by the Attorney General.*

*La Pointe.*—Mon nom est Jean Baptiste La Pointe, et dans l'année 1816, j'étois au service de la compagnie du Nord Ouest. J'ai connu un nomme Owen Keveny. Je l'ai reçu avec Faye, et José, en garde pour le mener au Lac la Pluie. C'étoit dans l'automne de cette année, la fin d'Aout ou le commencement de Septembre pendant la recolte de là. Du Bas de la Rivière nous avons été au Lac des Bois, où nous avons rencontré Mons. Thomson, qui nous a fait retourner, et en bas des Dalles nous avons laissé Keveny sur une petite isle. Le Sauvage José et moi avons eu une querelle et en conséquence nous nous sommes séparés. Il nous a quitté.

*Attorney General.*—José a-t-il montré un dessein de tuer Keveny ? <sup>(23)</sup>

<sup>(22)</sup> H. F.—I was taken prisoner at the entrance of the river La Croix; and La Pointe also, by Capt. D'Orsonnens; who examined us and took us to Lake La Pluie.

C. J. S.—As prisoner, or as witness ?

H. F.—At that time I did not know why, but I was taken by Capt. D'Orsonnens. I was examined by Capt. Matthey and another, but I do not recollect his name, and the following day we were taken before my Lord Selkirk, who took our oaths.

<sup>(23)</sup> L. P.—My name is Jean Baptiste La Pointe, and in the year 1816, I was in the service of the North West Company. I knew one named Owen Keveny. I received him, together with Faye and Joseph, under our guard, to convey him to Lake La Pluie. It was in the autumn of that year, the end of August or the beginning of September, at the time of the harvest there. From Bas de la Riviere we went to the Lake of the Woods, where we met Mr. Thomson, who made us turn back, and below the Dalles we left Keveny on a small island. The Indian Joseph, and I, had a quarrel, and in consequence we separated. He went away from us.

A. G.—Joseph, did he shew any intention of killing Keveny ?

*Mr. Stuart.*—We object to that question, for the reason so frequently assigned during the course of these trials and sustained by your honour.

*Chief Justice Sewell.*—Certainly, first, as I have frequently said before, prove a connection to exist between the prisoner and this Indian, before you examine what he did.

*Examination resumed by the Attorney General.*

*La Pointe.*—Après nous nous être séparés, nous avons retourné pour chercher Keveny, mais, ne sachant pas le chemin, nous avons arrêté sur une petite île, parceque nous avions peur de nous écarter, et pour attendre des canots. La cinquième journée, nous vîmes un canot montant de Bas de la Rivière, et le prisonnier M'Lellan étoit dedans avec De Reinhard, Cadotte, Grant, Mainville, et plusieurs *bois brûlés*. Cadotte, qui étoit dans le canot où étoit M'Lellan, nous demanda ce que nous avions fait de José et de Keveny. Faye a répondu que José avoit voulu tuer Keveny et tirer son fusil sur lui, mais qu'on l'avoit empêché; sur quoi Cadotte a dit, "sacrés salops, ce n'est pas vrai," et que "cela ne nous regardoit pas," et que "nous méritions des coups de bâton." Sur cela Mons. M'Lellan débarqua, et nous donna des coups de perche. Après, nous nous embarquâmes dans le canot de Mons. M'Lellan, et il nous a dit qu'il nous avoit battu parceque j'avois battu le Sauvage. Le prisonnier et Cadotte étoient ensemble dans le canot, et trois fois plus proche l'un à l'autre qu'à moi, quand Cadotte a dit "ce n'est pas vrai;" et ensuite Mons. Archy a débarqué et nous a battu. Je penserois que Mons. Archy a entendu la conversation entre moi et Cadotte; il étoit assez proche pour l'avoir entendu. La même journée, j'ai entendu Mainville, Vasseur, et les bois brûlés, parler de tuer



Keveny, et de se partager son butin. L'un disoit qu'il auroit son chapeau, et l'autre qu'il auroit ses bottes. M'Lellan étoit présent et pouvoit l'entendre comme moi. Les bourgeois dans le canot en rioient.

*Chief Justice Sewell.*—Le prisonnier, rioit il ?

*La Pointe.*—Oui, pour le sur, quand Mainville disoit qu'il auroit son chapeau, il rioit comme les autres. Ils ont parlé pour le certain plusieurs fois de l'intention de tuer Keveny, mais je ne puis pas dire combien de fois, c'étoit presque tout leur discours. <sup>(24)</sup>

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(24) L. P.—After we had separated, we went back in order to look for Keveny, but not knowing the way, we stopped at a small island, because we were afraid of losing ourselves, in order to wait for canoes. On the fourth day, we saw a canoe coming from Bas de la Riviere, and the prisoner M'Lellan was in it, with De Reinhard, Cadotte, Grant, Mainville and several bois brulés. Cadotte, who was in the canoe where M'Lellan was, enquired of us what we had done with Joseph and with Keveny. Faye replied that Joseph wanted to kill Keveny, and fire his gun at him, but that he had been prevented, upon which Cadotte said, "you blasted blackguards, it is false," and that "that was not our business," and that "we deserved a threshing." Upon this Mr. M'Lellan landed, and beat us with a canoe pole. Afterwards we embarked in Mr. M'Lellan's canoe, and he told us that he had beat us because I had beat the Indian. The prisoner and Cadotte were together in the canoe, and three times nearer to each other than to me, when Cadotte said, "it is false;" and then Mr. Archy landed and beat us. I should think that Mr. Archy heard the conversation between me and Cadotte; he was near enough to have heard it. The same day I heard Mainville, Vasseur, and the bois brulés speaking about killing Keveny, and dividing his things amongst themselves. One said that he would have his hat, and another said that he would have his boots. M'Lellan was present and might have heard as I did. The gentlemen in the canoe laughed at it.

C. J. S.—Did the prisoner laugh ?

L. P.—Yes, for certain, when Mainville said that he would have his hat, he laughed as the others did. They assuredly spoke several times of the intention of killing Keveny, but I can not say how often; it was almost the only subject of their conversation.

*Chief Justice Sewell.*—Le prisonnier a-t-il parlé dans ce tems là ?

*La Pointe.*—Non, pardonnez moi, non pas à ma connoissance, mais il en rioit. Après que nous avons rencontré les gens de la Rivière Cygne, j'ai entendu un bois brulé demander, "Où étoit Keveny," et ils disoient, "il est en haut des Dalles. Un bois brulé ensuite demanda, "comment fait-il son vivre," et après la reponse, que quelquefois il voloit, et quelquefois il achetoit, les bois brulés ont jetté un cri de joie, disant, "il ne volera pas plus long tems." Mons. Archy étoit là, mais je ne sais pas s'il étoit assez proche pour entendre ce discours ou non, ni s'il étoit dans le canot à ce moment, mais s'il n'étoit pas dedans, il n'étoit pas loin, car on partit de terre tout de suite, et les canots étoient sur le bord. Il étoit dans le canot lorsqu'on partit. Nous avons continué notre route. En bas des Dalles, avant de rencontrer les gens de la Rivière Cygne, et avant que nous sommes arrivés à l'isle où nous avons quitté Keveny, De Reinhard a dit "J'en aurai bien soin de lui" (Keveny) "c'est moi qui le tuera." Après être débarqués sur l'isle, nous rembarquâmes, et De Reinhard n'étant pas encore embarqué, quelqu'un des bois brulés, mais je ne connois pas qui, a dit à M'Lellan, que ce seroit De Reinhard qui tueroit Keveny, et M'Lellan a répondu "De Reinhard est trop palot, il n'est pas assez alerte pour le tuer." Keveny n'étoit pas sur l'isle où nous l'avions quitté. De là nous nous sommes retournés aux Dalles, et jusques là, depuis la rencontre des gens de la Rivière Cygne, on fut sombre, et je n'ai pas entendu de conversation. Nous avons trouvé Keveny en haut des Dalles, campé avec les Sauvages. Nous nous sommes rembarqués, mais De Reinhard est resté avec Keveny et Mainville, pour suivre dans un petit canot. Les autres se sont

embarqués avec M'Lellan dans son canot, et je l'ai entendu dire que Mainville, le Sauvage, et De Reinhard alloient rester, pour amener Keveny. Je ne sais rien pourquoi ces hommes étoient laissés. Keveny auroit bien pu être mis dans le canot de Mons. Archy, mais il dit qu'il ne vouloit pas l'embarquer dans son canot, mais je ne sais pas pourquoi, il n'en a donné aucune raison. Il s'étoit déchargé d'une dizaine de jarres de folle avoine de différentes grandeurs, qu'il a mis en cache, et il a pris le lit de Keveny, une de ses valises, une boîte couverte de peau de veau marin (seal skin,) et d'autre butin de Keveny, dans son canot. Suivant mon idée, ou dans mon estime, le canot étoit capable de lui prendre et son butin. Il n'étoit pas un petit homme, ni un homme aussi gros comme vous (the Attorney General) par exemple. Après avoir pris son butin, nous avons marché deux ou trois lieues, et avant d'arriver à terre nous avons entendu un coup de fusil. Je ne l'ai pas entendu moi même, mais les gens du canot l'ont entendu, et quelqu'un a demandé, "entendez vous ce coup de fusil?" et Desmarais, à ce que je crois, disoit, "ils l'ont tué." Je n'entendois pas le coup dans ce tems. M'Lellan étoit dans ce moment entre Desmarais et moi. Desmarais étant dans le devant du canot, et moi dans le derrière, mais je n'ai rien entendu de la part de Mons. Archy, ni des autres bourgeois. A ce moment ils m'ont parus plus sérieux qu'à l'ordinaire. Un peu de tems après, j'ai entendu moi même un coup de fusil, et alors nous étions campés à terre. Je ne sais si Mons. Archy l'a entendu; il ne me l'a pas dit. Un peu de tems après le petit canot est paru, avec Mainville, De Reinhard, et José. A ce moment un autre coup fut tiré, comme ils disoient, sur une outarde, et je l'ai vu tomber dans l'eau quand le canot approcha. Au tems de l'arrivée du

petit canot, Mons. Archy n'avançoit pas, et Mons. Keveny n'y étoit pas. Je n'ai rien entendu que ceci : à leur arrivée quelques parsonnes se sont avancées, et un des bois brulés a demandé, "quelle nouvelle?" Je ne sais si M'Lellan en étoit un, mais je n'ai pas alors entendu aucune observation de la part du prisonnier. Je ne sais s'il en a fait à d'autres. C'étoit De Reinhard qui parloit dans le canot, et non pas Mainville. Mainville a débarqué le butin de Keveny. Quand Mons. Archy a vu que Keveny n'y étoit pas, je ne l'ai entendu exprimer aucune surprise, ou se mettre en colere. Quand le canot a mis à terre j'ai vu les hardes de Keveny dedans pleines de sang, et elles furent lavées devant la tente de M'Lellan, mais il n'a rien dit là dessus, ni bien ni mal. J'ai vu un bois brulé mettre un pain de sucre blanc dans la tente de M'Lellan, et son domestique sucroit le thé du prisonnier avec. Il n'avoit pas de sucre blanc auparavant. Je n'ai pas vu les bottes de Keveny en possession des métifs, mais je les ai vu dans la tente du prisonnier. Avant ce tems le prisonnier n'avoit pas de sucre blanc. Le lendemain et après, le prisonnier et De Reinhard ont mangé ensemble, comme auparavant. Le prisonnier a dit, en ma presence, "faites bruler le canot," et Faye y étoit, avec les autres, dans le campement, qui étoit de trente pieds carrés. Il étoit aussi près que moi, et le prisonnier parloit aussi haut que je parle. Il a dit de bruler le canot, parceque cela pourroit donner quelque connoissance aux Sauvages, ou à quelqu'autre Canadien qui pourroit passer par là, du meurtre. Il y avoit aussi de la farine de Keveny dans un sac, qui fut embarquée dans le canot le lendemain, et les bois brulés en ont fait des galettes, dont le monde, avec moi même et le prisonnier, ont mangé. J'ai vu De Reinhard ouvrir le coffre de Keveny, mais je ne sais pas s'il l'a ouvert

avec la clef ou non. Les papiers ont été pris par le prisonnier, et je puis dire sur mon serment, que les papiers étoient les papiers de Keveny parceque je les ai vu. Ils ont été pris par le prisonnier dans la cassette qu'il a porté lui même contre le feu. De Reinhard ne prenoit pas les papiers hors de la cassette, et M'Lellan l'a porté lui même, et après que partie du monde étoit couchée, il a examiné les papiers et les a jetté dans le feu à mesure qu'il les examinait. Il n'étoit pas dans sa tente, mais contre le feu, et De Reinhard n'y étoit pas alors. C'étoit la cassette de Mons. Keveny, je puis dire sur mon serment. Mons. M'Lellan n'avoit pas brûlé tous les papiers, mais le lendemain il en a encore lu dans le canot. Il a lu un, et dit aux bois brûlés, "c'est bien bon que Mons. Keveny soit mort, parceque," montrant le papier, il leur dit que "Keveny avoit le pouvoir d'avoir des troupes du Roi pour aller prendre vos terres à la Rivière Rouge." Quelqu'un des bois brûlés a dit, "c'est donc un de ses papiers?" et il a répondu, "oui ;" j'ai vu Mons. Archy détruire les papiers quand il étoit dans le canot. Il les a jetté dans la fleuve avec des pierres pour les enfoncer. Avant de partir le matin, M'Lellan m'a dit de ne pas parler de ce meurtre là, disant, "prenez garde de parler du meurtre de Mons. Keveny, parceque vous autres seriez punis par nous." Il nous a dit aussi que le crime est également à nous et que nous serions punis, et Cadotte nous a dit que nous serions pendus. Plusieurs fois après, en chemin, il nous a défendu de parler du meurtre de Mons. Keveny, et encore quand nous fumes rendus au Lac la Pluie. C'étoit M'Lellan qui étoit le maitre dans le canot. De Reinhard a gardé ses armes dans le canot. Mons. Archy m'a paru en colère au tems que nous avions quitté Keveny sur la petite île, et qu'il pensoit qu'il avoit échappé à ses gens,

mais je n'ai jamais entendu aucun reproche, ni expression de colere, contre De Reinhard, ni Mainville, ni contre José. Ils ont été mieux que nous autres, car il ne leur a pas donné des coups de baton comme à nous autres, c'est à dire à Faye et à moi. <sup>(25)</sup>

(<sup>25</sup>) C. J. S.—Did the prisoner say any thing at that time?

L. P.—No, excuse me, not to my knowledge, but he laughed at it. After we had met with the people of Swan River, I heard a half breed enquire, "where was Keveny," and they said, "he is above the Dalles." A half breed then asked, "how does he get his living," and after the answer was given that sometimes he stole, and sometimes he bought, the half breeds uttered a cry of joy, exclaiming, "he shall not steal much longer." Mr. Archy was there, but I do not know whether he was near enough to hear this conversation or not, nor whether he was in the canoe at that instant, but, if he was not in it, he was not far off, for we immediately left the shore, and the canoes were at the water's edge. He was in the canoe when we pushed off. We continued our route. Below the Dalles, before we met the people of Swan River, and before we came to the island where we had left Keveny, De Reinhard said "I will take good care of him (Keveny) "it is I who will kill him." After having landed on the island, we re-embarked, and De Reinhard not being yet on board, one of the half-breeds, but I do not know which, said to M'Lellan, that it would be De Reinhard who would kill Keveny, and M'Lellan answered, "De Reinhard is too much of a milksop, he is not alert enough to kill him." Keveny was not on the island where we had left him. Thence we returned to the Dalles, and from the time we met the people of Swan River, down to the time we got there, the people were dull, and I heard no conversation amongst them. We found Keveny above the Dalles, encamped with the Indians. We re-embarked, but De Reinhard remained with Keveny and Mainville, to follow in a small canoe. The others embarked with M'Lellan in his canoe, and I heard him say, that Mainville, the Indian, and De Reinhard, were going to remain behind, in order to convey Keveny. I know nothing of why these men were left. Keveny might have been put in Mr. Archy's canoe, but he said, that he would not take him in his canoe, but I do not know why, he gave no reason for it. He had lightened it by unloading ten jars of wild rice of various sizes, which he secreted, and took Keveny's bedding, one of his trunks, a box covered with sealskin, and other things of Keveny's in his canoe. According to my opinion, as far as I can judge, the canoe was

*It being six o'clock the Court were adjourned till to-morrow at 8 o'clock, A. M. the Chief Justice ordering La Pointe to be committed to the care of Mr. Gauvin the constable.*

able to hold him and his baggage. He was not a little man, nor was he so large a man as you for instance, (speaking of the Attorney General.) After having taken these things on board, we proceeded two or three leagues, and before landing we heard the report of a gun. I did not hear it myself, but the people in the canoe heard it, and some one asked, "did you hear that gun?" and Desmarais, I believe, said "they have killed him." I did not hear the report that time. M'Lellan was at that time between Desmarais and me. Desmarais being in the head of the canoe, and I in the stern, but I did not hear any thing said by Mr. Archy, or by the other gentlemen. At that juncture they appeared to me to be more serious than usual. A short time afterwards, I heard the report of a gun myself, and we were then encamped on shore. I do not know whether Mr. Archy heard it; he did not tell me so. A little while afterwards the small canoe made its appearance, with Mainville, De Reinhard, and Joseph. At that moment another gun was fired, as they said, at a bustard, and I saw it fall into the water as the canoe approached. At the time of the arrival of the small canoe Mr. Archy did not come forward, and Mr. Keveny was not there. I heard nothing but this: on their arrival some persons advanced, and one of the half-breeds asked, "what news?" I do not know whether M'Lellan was one of them, but I did not then hear the prisoner make any observation. I do not know whether he made any to others. It was De Reinhard who spoke in the canoe and not Mainville. Mainville landed Keveny's things. When Mr. Archy saw that Keveny was not there, I did not hear him express any surprise, or put himself in a passion. When the canoe put ashore, I saw Keveny's clothes in it, full of blood, and they were washed before M'Lellan's tent, but he said nothing about it, neither good nor bad. I saw a half breed, put a loaf of white sugar into M'Lellan's tent, and his servant sweetened the prisoner's tea with it. He had no white sugar before. I did not see Keveny's boots in possession of the half-breeds, but I saw them in the prisoner's tent. Before that time the prisoner had no white sugar. The following day and afterwards, the prisoner and De Reinhard eat their meals together, as before. The prisoner said in my presence, "burn the canoe," and Faye was there, as well as the others, in the camp, which was thirty feet square. He was as near as I was, and the prisoner spoke as loud as I speak. He said the canoe was to be burnt, because it might give some knowledge to

Saturday, 13th June, 1818.

PRESENT AS BEFORE.

*The Jury having been called over, and being all present, the cross examination of La Pointe was conducted by Mr. Vanselson.*

*La Pointe.*—J'étois dans le canot de Mons. Cadotte, (et Mons. M'Donell étoit là aussi) en bas des Dalles, quand, pour la première fois, j'ai rencontré Mons. Keveny. Il étoit venu avec cinq bois-brulés, deux de qui étoient nommés Martin et Vassalle.

the Indians, or to some Canadian, who might be passing by, of the murder. There was also some flour of Keveny's in a bag, which was put on board the canoe the next day, and the half-breeds made cakes of it, of which all the people, myself and the prisoner included, partook. I saw De Reinhard open Keveny's chest, but I do not know whether he opened it with the key or not. The papers were taken by the prisoner, and I can say upon my oath, that the papers were Keveny's papers because I saw them. They were taken by the prisoner in the box, which he carried himself to the fire. De Reinhard did not take the papers out of the box, and M'Lellan carried it himself, and after part of the people were gone to bed, he examined the papers, and threw them into the fire in succession as he examined them. He was not in his tent, but at the fire, and De Reinhard was not there then. I can say upon my oath it was Mr. Keveny's box. Mr. M'Lellan had not burnt all the papers, but on the following day he was still reading some of them in the canoe. He read one and said to the half-breeds, "it is very well that Mr. Keveny is dead, because," shewing the paper, he told them that, "Keveny had the power of getting King's troops to go and take your lands at Red River." One of the half-breeds said, "that is one of his papers then?" and he answered, "yes." I saw Mr. Archy destroy the papers when he was in the canoe, he threw them into the river with stones to make them sink. Before starting in the morning, M'Lellan told me not to speak of this murder, saying, "take care not to speak of the murder of Mr. Keveny, for you and the rest of you would be punished by us." He said also that the crime was equally attributable to us, and that we should be punished, and Cadotte told us that we should be hung. Several times afterwards on the way, he forbade us to mention the murder of



Ce Mons. McDonell se disoit un des associés du Nord Ouest, et avoit le commandement de notre canot. Mons. Kevény avoit les fers aux mains, et Mons. McDonell les lui fit oter. Ils ont parlé et mangé ensemble, mais, comme ils ne parloient pas François, je ne les ai compris. Après, Mons. McDonell l'envoyoit avec nous autres, et gardoit les bois-brulés à Bas de la Rivière. Quand je dis nous autres, je veux dire moi, Faye, et José le Sauvage nommé Perdrix Blanche. Mons. McDonell l'envoyoit au Lac la Pluie, et c'est le chemin au Grand Portage, et la route pour venir ici. Quand Mons. McDonell nous l'a donné en charge, nous avons fait des objections parceque nous n'avions pas un guide, mais Mons. McDonell nous a dit que le Sauvage seroit notre guide, vu qu'il connoissoit bien le chemin. Il nous repugnoit de venir avec José, qui ne parloit pas François, mais Mons. McDonell nous a dit de laisser faire José ce qu'il voudroit, car autrement il nous laisseroit dans le chemin. Avant de partir McDonell l'a donné deux bouteilles de boisson. J'ai bien compris que, comme notre guide, José étoit le maitre du canot, et que quand il voudroit débarquer il falloit le faire. Faye et moi étions novices alors dans ce pays, et avions peur des Sauvages. Nous partîmes et laissâmes Kevény sur une isle en bas des Dalles, mais non pas tout de suite. Nous ne lui avons laissé aucun fusil, ni de quoi faire de feu, et je ne sais qu'il en avoit.

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Mr. Kevény, and again when we were come to Lake La Pluie. It was M'Lellan who was master in the canoe. De Reinhard retained his arms in the canoe. Mr. Archy, appeared to me to be in a passion at the time we had left Kevény on the small island, and when he thought that he had escaped from his people, but I never heard any reproches, or any expressions of anger, either against De Reinhard, or Mainville, or against Joseph. They were better off than we were, for they were not beat as we were, that is Faye and me.

Il n'y avoit personne sur l'islé ; plus loin, en haut des Dalles, à deux ou trois lieues, il y avoit des Sauvages. S'il savoit nager il pouvoit en sortir, n'ayant pas loin à la terre ferme. Il y avoit de bois, et il auroit pu faire un radeau. Il n'avoit pas une hache, ni une scie. C'est difficile certainement de faire un radeau, n'ayant pas de hache ni de scie. Les canots passent par là, et il auroit pu y embarquer. Après l'avoir quitté nous retournâmes aux Dalles avec José, et il a acheté un canot, et nous avons passé, en re-descendant, au large de l'isle où nous avions laissé Keveny. Il y avoit un pavillon là, mais je n'y ai pas vu une tente. Quand j'y ai vu un pavillon, nous avons voulu aller à terre pour le reprendre, mais le Sauvage ne vouloit pas, disant que le canot étoit trop petit, et il nous disoit, *nage, nage*—Ayant cassé le canot que nous avions auparavant, le Sauvage avoit acheté un plus petit que l'autre. Je n'entendois pas la langue Sauvage à ce tems, mais il nous disoit, *nage, nage*, et nous donnoit des coups d'aviron par dessus le marché ; il nous vergéoit souvent. Le Sauvage ne parloit pas François ; le seul mot qu'il dit, étoit, *nage, nage*. Nous lui avons fait des signes pour aller à terre et de ne pas nager à ce tems, mais il faisoit signe de la tête et disoit, *qua-oui, qua-oui*, (que veut dire *non*, à ce qu'on m'avoit dit avant,) et quand nous avons nagé il gouvernoit le canot au large de l'isle où étoit Keveny. A la chute des Esclaves nous avons mis à terre ; c'est un portage, et c'est là que le Sauvage nous a quitté. J'ai eu difficulté avec José, et nous nous sommes battus, et il nous a laissé. Nous voulions manger, mais le Sauvage ne vouloit pas nous permettre. José a voulu tirer sur moi, mais Faye lui a ôté son fusil. Il a pris un aviron pour me frapper, et je lui ai donné un coup de bois. Après que Faye lui eut ôté son fusil, on vit qu'il n'avoit pas de pierre, mais je ne le savois pas auparavant,

à ce que je me souviens. José se sauva dans les bois, on l'appelloit, mais il grattoit, (c'est à dire il alloit bien vite.) Nous partîmes avec l'intention de retourner à Keveny, mais comme il y avoit bien des isles, nous creignâmes de nous écarter, et nous avons resté à terre pour attendre des canots. Le prisonnier à la barre nous y trouva, et Mons. Cadotte nous demanda ce que nous faisions là, et je lui ai dit comment nous étions là. Mons. Archy alors a débarqué et nous a battu. Mons. Archy a débarqué le premier, et c'étoit assurément avant que Mons. Archy débarquoit, que je l'ai raconté à Mons. Cadotte, et Mons. Cadotte ensuite disoit, "vous mentez, ce n'est pas vrai," et donc Mons. Archy m'a battu, mais il ne dit pas pour quoi, et je me sauois. Il disoit, "mon sacré gueux, tu es dans une isle, et je t'attrapperai bien." Avant que M'Lellan a débarqué nous avons dit à Cadotte, et aux autres, que le Sauvage qu'on nous avoit donné, avoit voulu tirer sur Keveny, et qu'il avoit voulu tirer sur moi, et nous avoit maltraité le long du chemin. Cadotte nous montra le Sauvage, et nous a dit "ce n'étoit pas vrai, que c'étoit nous qui l'avions battu." (26)

(26) I was in Mr. Cadotte's canoe, (and Mr. Macdonell was there likewise,) below the Dalles, when I met Mr. Keveny for the first time. He came with five half-breeds, two of whom were called Matin and Vassalle. This Mr. Macdonell, called himself one of the North West Partners, and had the command of our canoe. Mr. Keveny had handcuffs on, and Mr. Macdonell caused them to be taken off. They conversed and eat together. Afterwards Mr. Macdonell sent him with us, and kept the half-breeds at Bas de la Riviere. When I say *us*, I mean, myself, Faye, and Joseph the Indian, called White Partridge. Mr. Macdonell sent him to Lake La Pluie, and that is the road to the Grand Portage, and the way to come hither. When Mr. Macdonell gave him in charge to us, we made objections because we had no guide, but Mr. Macdonell told us that the Indian would be our guide, since he was well acquainted with the way. We were averse to going with Joseph, who did not speak French, but Mr. Macdonell told us to let Joseph do as he liked, for if we did not, he would leave

*Mr. Vanfelson.*—Je voudrois vous demander sur votre serment, au tems que Mons. Cadotte vous a montré le Sauvage, n'avez vous pas dit que c'étoit Faye qui l'avoit battu, et si Faye n'a pas dit que c'étoit vous, et si vous ne l'avez pas contradit.

us on the way. Before we departed Macdonell gave him two bottles of liquor. I fully understood that, being our guide, Joseph was the master of the canoe, and that, when he wanted to put ashore, we were to do it. Faye and I were then novices in that country, and were afraid of the Indians. We departed and left Kevony on an island below the Dalles, but not immediately. We left him no gun, nor any thing wherewith to make a fire, and I do not know whether he had any materials for the purpose. There was no body on the island. Farther on, above the Dalles, at two or three leagues distance, there were Indians. If he could swim he might get away from the island, for it was not far from the main land. There was wood there, and he might have made a raft. He had no axe, nor any saw. It would certainly be difficult to construct a raft without either an axe or a saw. The canoes pass that way, and he might have embarked on board of them. After having left him, we returned to the Dalles with Joseph, and he purchased a canoe, and we passed, in going down, at a distance from the island where we had left Kevony. There was a flag there, but I did not see any tent. When I saw there was a flag, we wanted to go on shore to take him on board again, but the Indian would not consent, saying that the canoe was too small, and he said to us, *paddle, paddle*. Having broken the canoe which we before had, the Indian bought a smaller one than the other. I did not understand the Indian language at that time, but he said, *paddle, paddle*, and he bestowed upon us blows with a paddle into the bargain, he often flogged us. The Indian did not speak French; the only word which he said was, *paddle, paddle*. We made signs to him to go on shore, and not to paddle then, but he made a sign with his head, and said, *qua-oui, qua-oui*, (which signifies, *no*, as had before been told me,) and when we paddled he steered the canoe at a distance from the island where Kevony was. At the Slave Fall we landed: it is a portage, and it was there that the Indian quitted us. We wanted to dine, but the Indian would not permit us. Joseph wanted to shoot at me, but Faye took away his gun from him. He took a paddle to strike me, and I gave him a blow with a piece of wood. After Faye had taken away his gun, we saw that it had no flint, but I did not know of that before, as far as I can recollect. Joseph ran away into the woods, we called after him, but he scratched on, (that is to say, he went very fast.) We departed with an

*La Pointe.*—Non ; je n'ai pas dit alors que c'étoit Faye qui l'a battu. J'ai dit que c'étoit moi qui l'avoit battu, parcequ'il a tiré sur moi, et je n'ai pas entendu que Faye a dit que c'étoit moi. (7)

*Mr. Vanselson reminding La Pointe that he was upon his oath, again put the question, and received a similar answer.*

*Chief Justice Sewell.*—Je voudrois savoir du témoin, si à l'ordinaire les gens d'un canot conversent généralement, ou les bourgeois entre eux et les engagés entre eux, et non pas autrement?

*La Pointe.*—A l'ordinaire les bourgeois ne conversent pas avec les engagés dans les canots, mais les bourgeois parlent ensemble et les engagés entre eux. Excepté pour les affaires les bourgeois ne parlent pas avec les engagés dans les canots. (8)

intention of returning to Keveny, but as there were many islands, we were afraid of losing ourselves, and we remained on shore to wait for canoes. The prisoner at the bar found us there, and Mr. Cadotte asked us, what we were doing there, and I told him how it came that we were there. Mr. Archy then came ashore and beat us. Mr. Archy landed the first, and it was certainly before Mr. Archy landed, that I related it to Mr. Cadotte, and Mr. Cadotte then said, "you lie, it is not true," and then Mr. Archy beat me, but he did not say why, and I ran away. He said, "you damned rascal, you are on an island and I shall soon catch you." Before M'Lellan landed, we said to Cadotte, and to the others, that the Indian who had been given to us, wanted to shoot Keveny, and that he wanted to shoot me, and had maltreated us all the way. Cadotte pointed out the Indian to us, and said to us "that is false," and that it was us who had beat him.

(27) *Mr. V. F.*—I desire to ask you, upon your oath, at the time that Mr. Cadotte pointed out the Indian to you, did you not say that it was Faye who had beat him, and whether Faye did not say that it was you, and whether you did not contradict it?

*L. P.*—No, I did not then say that it was Faye who had beat him. I said that it was I who had beat him, because he fired at me; and I did not hear Faye say that it was I.

(28) *C. J. S.*—I wish to know from the witness, whether it is usual for the people on board a canoe, to converse generally together, or the gentlemen (bourgeois) amongst themselves, and the servants (engagés) amongst themselves, and not otherwise?

*Cross examination resumed by Mr. Vanselson.*

*La Pointe.*—C'est ordinairement au guide ou au bout de canot, qu'ils donnent leurs ordres. C'est à lui qu'ils adressent leurs ordres quand ils ont besoin de les donner. Quand nous embarquâmes avec le prisonnier, il y avoit quinze dedans le canot; et nous étions neuf ou dix qui nageoient. Ce n'est pas aisé de nager et de parler à la fois. Nous avons parlé plus que deux fois cette journée, mais je ne puis pas dire combien. Mainville et Vasseur ont parlé de le tuer, et lorsqu'on parloit de tuer Keveny ils étoient ceux qui parloient de partager son butin. Mainville disoit que si c'étoit lui qui le tueroit, il auroit son chapeau; Vasseur, qu'il auroit ses bottes. D'autres bois brulés ont parlé, mais je ne connois pas leurs noms, l'un disoit qu'il auroit sa couverte, un autre ses culottes de chamois. Je ne sais pas en quelle partie du canot j'étois alors. Je ne sais pas si j'étois devant ou en arrière, et je ne me rappelle qui étoit dans la même barre avec moi. J'ai nagé tantôt derriere, tantôt devant, mais je ne puis pas dire où j'étois placé alors. Les hommes changent bien souvent en nageant, mais si j'étois contre le gouvernail, il y avoit trois rangs d'hommes à chaque coté, entre moi et les bourgeois, mais je ne suis pas sur si j'étois contre le gouvernail, ni si j'étois en avant ou en arrière. Si j'étois en avant il y avoit deux hommes de chaque coté en arrière de moi. C'est à dire j'aurois fait un du troisieme rang. Si j'étois contre le gouvernail, il y avoit trois hommes de chaque coté en avant de moi. J'avois presque toujours M'Lellan en face, quelquefois en pleine face, et quelquefois de coté.

L. P.—Usually the bourgeois do not converse with the engagés in the canoes, but the bourgeois converse amongst themselves, and the engagés amongst themselves. Excepting on matters of business the bourgeois do not speak to the engagés in the canoes.

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Il changeoit sa place bien souvent, mais je ne me souviens pas s'il avoit changé plus souvent que moi. <sup>(29)</sup>

*Chief Justice Scwell.*—I wish, Mr. Vanfelson, to put one question to him, as I think it will settle where his station was.

Ecoutez temoin ! Quand vous avez nagé en avant du canot, fut il votre dos ou votre face qui étoit contre le prisonnier ? Souvenez vous pour un moment.

*La Pointe.*—C'étoit mon dos assurément quand je nageois en avant du canot. <sup>(30)</sup>

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<sup>(29)</sup> It is generally to the guide, or to the man at the stern of the canoe that they give their orders. It is to him they address their orders when they have occasion to give any. When we embarked with the prisoner, there were fifteen in the canoe, and there were nine or ten of us who paddled. It is not easy to paddle and to talk at the same time. We talked more than twice that day, but I can not say how often. Mainville and Vasseur talked of killing him; and when the talk was about killing Keveny, it was they who spoke of dividing his property. Mainville said that if he killed him he would have his hat; Vasseur that he would have his boots. Other halfbreeds joined in the conversation, but I am unacquainted with their names. One said he would have his blanket, another his leather breeches. I do not know in what part of the canoe I then was. I do not know whether I was at the head, or in the stern, and I do not recollect who was in the same bar with me. I paddled some times behind, and sometimes before, but I can not say where I was then situated. The men often change places in paddling, but if I was next to the steersman, there were three ranks of men on each side between me and the bourgeois, but I am not sure that I was next to the steersman, nor whether I was before or behind. If I was before, there were two men on each side behind me. That is to say that I should have been one of the third rank. If I was next to the steersman, there were three men on each side before me. I had almost always M'Lellan in front of me, sometimes facing me fully, and sometimes sideways. He very often changed his place, but I do not know whether he changed oftener than I did.

<sup>(30)</sup> C: J. S.—Listen, witness ! when you paddled in the forepart of the canoe, was it your back, or your face that was turned towards the prisoner ? recollect yourself an instant.

L. P.—It was my back most certainly when I paddled in the forepart of the canoe.

*Chief Justice Sewell.*—It seems to me to be at present a very material point for you, gentlemen of the jury. We therefore tried to get the fact and it appears to us to establish where he was.

*Cross examination resumed by Mr. Vanfelson:*

*La Pointe.*—Quand nous avons trouvé Keveny en haut des Dalles, on s'occupoit du canot que le Sauvage avoit auparavant brisé, pour y mettre Keveny, et ils l'ont fait gommer. Mons. Grant parloit avec le prisonnier, et lui donnoit sa main, mais, comme je n'entends pas l'Anglois, je ne puis pas dire ce qu'ils disoient, mais ils parloient tranquillement. <sup>(31)</sup>

*Chief Justice Sewell.*—Où étoit Mainville au tems de cette conversation, et où étoit Vasseur?

*La Pointe.*—Quand Mainville a dit qu'il auroit son chapeau, il étoit devant moi, dans le rang immédiatement en avant. Quand Vasseur a dit qu'il auroit ses bottes, il étoit dans la même barre avec les bourgeois.

*Chief Justice Sewell.*—Dans la même barre avec le prisonnier M'Lellan?

*La Pointe.*—Oui, dans la même barre, et il nageoit la. <sup>(32)</sup>

(<sup>31</sup>) When we found Keveny above the Dalles, they were engaged about the canoe which the Indian had before broke, in order to put Keveny in, and they caused it to be gummed. Mr. Grant conversed with the prisoner, and shook hands with him, but, as I do not understand English, I can not tell what they said, but they spoke gently.

(<sup>32</sup>) C. J. S.—Where was Mainville at the period of this conversation, and where was Vasseur?

L. P.—When Mainville said that he would have his hat, he was before me, in the rank immediately before me. When Vasseur said that he would have his boots, he was in the same bar with the bourgeois.



*Mr. Vanfelson.*—Est il commun pour les voyageurs de nager dans la même barre avec les bourgeois ?

*La Pointe.*—Oui, quelquefois, quand le canot est trop chargé. Je suis certain que Vasseur étoit là, et Mainville étoit sur une barre en avant de moi, et contre les bourgeois. Dans les canots allèges, de la grandeur de celui du prisonnier, il y a ordinairement huit nageurs, et deux ou trois bourgeois, mais nous étions dans ce canot, quinze ; dix nageurs, quatre bourgeois, et José qui ne travailloit pas. Au tems que Vasseur disoit qu'il auroit ses bottes, il étoit dans la même barre avec les bourgeois, et tournoit la tête vers le derrière du canot, où étoit Mainville, et ordinairement il avoit son visage contre moi.

*Mr. Vanfelson.*—N'avez vous pas, au tems que vous avez trouvé Keveny, entendu De Reinhard dire que comme le canot de Mons. M'Lellan étoit trop chargé, qu'il n'auroit soin, et qu'il resteroit avec Keveny, ou n'avez vous pas entendu Mons. M'Lellan dire à De Reinhard, "comme le canot est trop chargé, et vu que vous l'avez pris prisonnier, vous avez mieux rester avec lui, et nous suivre dans le petit canot ?" Rappelez vous bien que vous êtes sur votre serment.

*La Pointe.*—Je me le rappelle bien, Je n'ai pas entendu De Reinhard dire à ce tems, qu'il n'auroit pas soin, qu'il l'avoit pris, et qu'il resteroit, et je n'ai pas entendu Mons. Archy dire qu'il ne l'avoit pas pris, et comme De Reinhard l'avoit pris il avoit mieux de rester.

*Mr. Vanfelson.*—En quelle partie du canot pouviez vous mettre Keveny et trois autres, en même tems que Vasseur étoit dans la même barre avec les bourgeois ?

*La Pointe.*—On auroit pu mettre Keveny entre les deux rangs de nageurs, mais ce n'est pas à l'ordinaire qu'on met des gens entre les nageurs. Ou bien au fonds du canot, où certainement il n'auroit pas été bien à son aise, mais il pourroit s'y tenir.

*Mr. Vanfelson.*—Donc, si je vous comprends, vous voulez dire, sur votre serment, que dans un canot de la longueur de celui là, avec déjà quinze hommes et leur butin dedans, vous pouviez, sans danger, prendre encore De Reinhard, et trois autres, avec leur butin, et faire la traverse ? sur votre serment est il vrai ?

*La Pointe.*—Je n'entendois pas dire que les quatre pouvient y aller ; mais si on eût pris Keveny et son butin alors, il auroit été dangereux de faire la grande traverse, s'il eût venté, avec un canot aussi chargé, mais jusqu'à là, cela auroit pu aller. C'est dangereux de traverser le lac avec des vents. Le soir, au campement, je suis bien certain, que je n'ai pas vu de feu devant la tente du prisonnier. S'il y avoit un bon feu devant la tente des bourgeois, comme à l'ordinaire, je l'aurois bien vu, pour le certain. Quand le petit canot est arrivé à terre, Mons. M'Lellan étoit à la distance de cette chambre, ou environ, ou peut-être moins, à ce que je pense ; plusieurs se sont avancés, mais je ne sais pas si M'Lellan y étoit, ni s'il a dit quelque chose. Je ne puis pas dire qu'ils (De Reinhard et M'Lellan) ont mangé ensemble ce soir, mais le lendemain matin ils ont déjeuné ensemble, et pendant le restant de la route ils ont mangé ensemble, jusqu'au Lac la Pluie, et au Lac la Pluie.

*Mr. Vanfelson.*—Les bourgeois sont ils ordinairement pêle mêle, avec les voyageurs et bois brulés, ou dans leur tente avec les commis et interprètes ?

*La Pointe.*—Je ne puis pas dire que les bourgeois et les engagés sont ensemble à l'ordinaire. Les

bourgeois et commis mangeoient ensemble avec les interprètes, et les engagés mangeoient au feu, mais ils viennent d'un feu à l'autre, et badinent avec les engagés.

*Mr. Vanfelson.*—Je vous demande si, contre la volonté des bois brûlés et Sauvages, Mous. M'Lellan auroit pu prendre De Reinhard, Mainville, et José prisonniers ?

*La Pointe.*—Si les bois brûlés et les Sauvages s'y fussent opposés, le prisonnier n'auroit pas pu prendre De Reinhard, ou Mainville, ou José, quand il auroit voulu le faire. <sup>(33)</sup>

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<sup>(33)</sup> *Mr. V. F.*—Is it usual for the voyagers to paddle in the same bar with the bourgeois ?

*L. P.*—Yes, sometimes, when the canoe is overloaded. I am certain that Vasseur was there, and Mainville was on a bar before me, and next to the bourgeois. In light canoes, of the size of that of the prisoner, there are generally eight paddlers, and two or three bourgeois, but there were fifteen of us in that canoe; ten paddlers, four bourgeois, and Joseph, who did not work. At the time that Vasseur said that he would have his boots, he was in the same bar with the bourgeois, and turned his head towards the stern of the canoe, where Mainville was, and he generally had his face towards me.

*Mr. V. F.*—Did you not, at the time you found Keveny, hear De Reinhard say, that as Mr. M'Lellan's canoe was too much loaded, he would not care, and that he would remain with Keveny, or did you not hear Mr. M'Lellan say to De Reinhard, "as the canoe is overloaded, and it was you who took him prisoner, you had better stay with him, and follow us in the small canoe?" Be sure to remember that you are upon your oath.

*L. P.*—I certainly remember that I am. I did not hear De Reinhard say at that time, that he would not care, that he had taken him, and that he would stop; and I did not hear Mr. Archy say that he had not taken him, and that as De Reinhard had taken him, he had better remain.

*Mr. V. F.*—In what part of the canoe could you have put Keveny and three others, whilst Vasseur was in the same bar with the bourgeois.

*L. P.*—Keveny might have been put between the two ranks of paddlers, but it is not usual to put any body between the paddlers. Or else in the bottom of the canoe, where he would certainly not have been at his ease, but he might have been put there.

*Chief Justice Sewell.*—I do not see what this has to do with the case.

*Mr. Vanfelson.*—I beg your honor to take his answer, as my next question will, I think, clearly shew its importance to the prisoner.

*Mainville;* n'est il pas un bois brûlé?

*La Pointe.*—Oui, il est.

*Mr. Vanfelson.*—José, est il un Sauvage?

*Mr. V. F.*—Then, if I understand you, you mean to say, upon your oath, that in a canoe of the length of the one in question, which had already fifteen men and their baggage on board, you could, without danger, take in addition, De Reinhard, and three others, with their baggage, and make a traverse. Upon your oath, is that true?

*L. P.*—I did not mean to say that the four could have gone; but if we had taken Keveny and his things then, it would certainly have been dangerous to have made the great traverse, if the wind blew, with a canoe so much loaded, but till then, it might have done. It is dangerous to traverse the lake when it blows. In the evening, at the camp, I am quite sure that I did not see any fire before the prisoner's tent. If there had been a good fire before the tent of the bourgeois, as usual, I certainly must have seen it. When the small canoe arrived at the shore, Mr. M'Lellan was, I believe, at the distance of this room, or thereabouts, perhaps less; several came forward, but I do not know whether M'Lellan was amongst them, nor whether he said any thing. I can not say whether they, (De Reinhard and M'Lellan) supped together that evening, but on the following morning they breakfasted together, and during the rest of the voyage they took their meals together, as far as Lake La Pluie, and at Lake La Pluie.

*Mr. V. F.* Are the partners generally pell mell with the voyageurs and half-breeds, or in their tent with the clerks and interpreters.

*L. P.*—I can not say that the bourgeois and the engagés are usually together. The partners and clerks took their meals together, and with the interpreters, and the engagés their's at the fire; but they come from one fire to the other, and joke with the engagés.

*Mr. V. F.*—I ask you whether Mr. M'Lellan could have taken De Reinhard, Mainville, and Joseph, prisoners, against the will of the half-breeds and Indians?

*L. P.*—If the half-breeds and Indians had opposed it, the prisoner could not have taken De Reinhard, or Mainville, or Joseph, if he had wanted to do so.

*La Pointe.*—Certainement. Les bois brûlés et les Sauvages sont proches parens. Après que De Reinhard a été pris par le Capit. D'Orsonnens, je ne les ai jamais vu manger ensemble, ni souvent ensemble dans la tente, mais peut être ils en ont fait. <sup>(34)</sup>

*Chief Justice Sewell.*—I have not taken any thing relative to De Reinhard, it does not bear on this case at all.

*La Pointe.*—Avant le moment qu'ils ont partagé le butin de Keveny, Mons. Archy n'avoit rien que de sucre Sauvage. Le pain de sucre blanc fut porté dans la tente par un bois brûlé. Je ne l'ai jamais vu dans la tente, mais j'ai vu un bois brûlé le mettre dans un panier auprès de sa tente. Au tems que je l'ai vu mis dans le panier, j'étois à la distance de la longueur de la boîte des juges. Je ne sais pas que le bois brûlé lui a parlé au tems qu'il a mis le sucre dans le panier. C'est le lendemain que j'ai vu les bourgeois prendre du thé avec du sucre blanc que leur domestique y mettoit. Ce n'étoit pas le meme soir, mais le lendemain que je les ai vu prendre du thé avec du sucre blanc. C'étoit Rochon, son domestique, qui m'a dit que M'Lellan n'avoit pas du sucre blanc, et je n'en avois pas vu auparavant. C'étoit lui, Rochon, qui coupoit le sucre. Mons. M'Lellan avoit auparavant de sucre gris ou Sauvage. C'étoit lui, Rochon, qui mettoit le sucre devant eux, mais je ne l'en ai pas vu mettre dans les tasses. <sup>(35)</sup>

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<sup>(34)</sup> Mr. V. F.—Mainville, is he not a half-breed?

L. P.—Yes, he is.

Mr. V. F.—Joseph, is he an Indian?

L. P.—Certainly. The half-breeds and Indians are near relations. After De Reinhard was taken by Capt. D'Orsonnens, I did not see them eat together, or often in the tent together, but they may have done so.

<sup>(35)</sup> Before the time that they divided Keveny's things, Mr. Archy had nothing but Indian (maple) sugar. The loaf of white

*Chief Justice Sewell.*—Of what consequence is it whether the domestic sugared the tea or not? Do let us, if you think it important, understand what he means to say upon this apparently trifling subject.

*La Pointe.*—Je n'ai pas vu le domestique dans la tente, mais je l'ai vu couper le pain de sucre blanc. Au tems dont j'ai parle que Mons. M'Lellan examinoit et lisoit les papiers de Keveny, il étoit contre notre feu. Il les prenoit dans la cassette, c'étoit le prisonnier qui l'apporta contre le feu. (6)

*Mr. Vanselson.*—Will your Honour take that?

*Chief Justice Sewell.*—What difference who took them?

*Mr. Vanselson.*—I beg to mention one circumstance, and I trust your Honour will see why it is important. Faye, in his evidence, said that it was De Reinhard who brought it.

*La Pointe.*—Je n'ai pas dormi cette nuit là. Ce soir là, on m'a defendu de parler de la mort de Keveny. Cela me donnoit à penser, et j'avois peur des bois

\* sugar was carried into the tent by a half-breed. I never saw it in the tent, but I saw a half-breed put it into a basket near his tent. At the time that I saw it put into the basket, I was at the distance of the length of the judges' bench. I do not know that the half-breed spoke to him at the time that he put the sugar in the basket. It was the next day that I saw the gentlemen take tea with white sugar, which their servant put into it. It was not the same evening, but the next day, that I saw them take tea with white sugar. It was Rochon, his servant, who told me that M'Lellan had not any white sugar, and I had seen none before. It was he, Rochon, who broke the sugar. Mr. M'Lellan had nothing before that but grey or Indian (maple) sugar. It was he, Rochon, who placed the sugar before them, but I did not see him put any into the cups.

(7) I did not see the servant in the tent; but I saw him break the loaf of white sugar. At the time of which I spoke, when Mr. M'Lellan, examined and perused Keveny's papers, he was at our fire. He took them out of the box. It was the prisoner who carried the box to the fire.

brulés, de De Reinhard, et de tous. Je pensais que les papiers étoient les papiers de Keveny parcequ'ils ont été tirés de la cassette de Keveny, et je n'ai pas vu auparavant une telle quantité de papiers. C'est ce qui m'a fait croire qu'ils étoient ceux de Keveny. Je n'ai pas connoissance que, rendu au Lac La Pluie, Mons. M'Lellan a ôté le sabre et le fusil de Te Reinhard. Rendu au Lac La Pluie, mon cousin, La Pointe, vint me dire d'aller trouver le Capit. D'Orsonnens, et j'y fus. Il me demanda si j'avois aucune connoissance de la mort, ou du meurtre, de Mons. Keveny, et j'e fus envoyé, avec Faye, au Fort William, où j'ai fait ma declaration devant le Capit. Matthey, qui l'écrivoit, et après, j'ai fait serment sur ma declaration.

*Mr. Vanfelson.*—Depuis que vous l'avez fait, je demande, sur votre serment, si vous n'avez pas dit à qui que ce soit, ni entendu dire par Faye, que quand vous avez vu le pavillon, ou la tente de Keveny sur l'isle, que José avoit voulu mettre à terre pour prendre Keveny, mais que vous et Faye ne vouloient pas le permettre? Gardez vous bien sur votre serment.

*La Pointe.*—Quand?

*Mr. Vanfelson.*—N'importe quand; l'avez vous jamais dit, ou entendu dire par Faye?

*La Pointe.*—Ni l'un, ni l'autre. Je ne l'ai jamais dit, et je ne l'ai jamais entendu dire par Faye.

*Mr. Vanfelson.*—Ni raconté à qui que ce soit que vous l'avez entendu dire par Faye?

*La Pointe.*—Je ne l'ai jamais entendu, et je ne l'ai jamais raconté à personne, qui que ce soit, que je l'ai entendu. <sup>(37)</sup>

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(37) L. P.—I did not sleep that night. That evening I had been ordered not to speak of Keveny's death. That made me thoughtful, and I was afraid of the half-breeds, of De Reinhard, and of all. I considered the papers to be Keveny's papers, be-

**AUGUSTIN POIRIER DIT DE LORGE, sworn,  
and examined by the Attorney General.**

*Poirier dit De Lorge.*—J'étois en 1816 dans le territoire Sauvage avec Colishe Ducharme en brigade. En allant à la rivière des Cygnes, j'ai rencontré le prisonnier à la barre. C'étoit en bas des Dalles dans la rivière Winnipic que je l'ai rencontré. J'ai entendu Mons. M'Lellan demander à Colishe Ducharme, si nous avions connoissance, en chemin, de Mons. Keveny, et Colishe a répondu, qu'oui; qu'il l'avoit vu, et l'avoit parlé. Le prisonnier a demandé alors, "comment Keveny faisoit pour vivre;" Colishe a répondu, "quelquefois il achète des vivres des Sauvages, quelquefois ils lui en donnent, et quelquefois il en vole." Sur cela M'Lellan a dit, "He bien, c'est bon, il ne volera pas long tems; demain à ces heures ci, son affaire

cause they were taken out of Keveny's box, and I had not before taken notice of such a quantity of papers. I do not know that, when he came to Lake La Pluie, Mr. M'Lellan took De Reinhard's sword and gun away. When we were at Lake La Pluie, my cousin, Faye, came to tell me to go to Capt. D'Orsounens, and I went. He asked me whether I had any knowledge of the death, or of the murder, of Mr. Keveny, and I was sent, with Faye, to Fort William, where I made my declaration before Capt. Matthey, who wrote it out, and afterwards, I made oath to my declaration.

Mr. V. F.—Since you made it, I ask you, upon your oath, whether you did not say to any one, or hear Faye say, that, when you saw the flag, or the tent of Keveny on the island, Joseph wanted to go on shore to take Keveny, but that you and Faye would not let him? Take good care, you are on your oath.

L. P.—When?

Mr. V. F.—No matter when; did you ever say so, or hear Faye say so.

L. P.—Neither one nor the other. I never said so, nor did I ever hear Faye say so.

Mr. V. F.—Nor told any one whomsoever that you heard Faye say so?

L. P.—I never heard it, nor did I ever tell any person whatsoever that I had heard it.



"sera faite, peut être ne verra-t-il plus le soleil  
"coucher."<sup>(35)</sup>

*The Court adjourned for half an hour, to allow the  
Jury to take refreshment.*

#### SATURDAY AFTERNOON.

*The Jury being called over, and all present, Mr.  
Valliere de St. Real stated that they had no ques-  
tions to put to Poirier dit de Lorge.*

**FREDERICK DAMIEN HEURTER**, sworn,  
and examined by the Attorney General.

*Heurter.*—En 1816 j'étois dans les pays Sauvages, dans la partie qu'on appelle, Bas de la rivière Winnipic. Je connois le prisonnier à la barre, et je connois Alex. McDonell. Je ne puis pas dire où il est à present, mais je crois qu'il est encore dans les territoires Sauvages. A ce que j'ai oui dire, il est parti pour les Montagnes des Roches, et je le crois.<sup>(36)</sup>

*Chief Justice Sewell.*—Is that in the United States of America?

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<sup>(35)</sup> In 1816, I was in the Indian territory with Colishe Ducharme in a brigade. On the way to Swan River, I met the prisoner at the bar. It was below the Dalles, in the river Winnipic that I met him. I heard Mr. M'Lellan ask Colishe Ducharme, whether, on our way, we had heard any thing of Mr. Keveny, and Colishe answered, yes, that he had seen and spokè to him. The prisoner then asked, "how does Keveny do to live?" Colishe answered, sometimes he purchases victuals from the Indians, sometimes they give him them, and sometimes he steals them." Upon which M'Lellan said, "very good, 'tis well, he will not steal a long while; tomorrow by this time, his business will be done, perhaps he may never see the sun set again."

<sup>(36)</sup> In 1816, I was in the Indian country, in the part called Bas de la Riviere Winnipic. I know the prisoner at the bar, and I know Alex. Macdonell. I can not say where he is at present, but I believe he still remains in the Indian territory. According to what I have heard, he went away to the Rocky Mountains, and I believe it.

*Heurter.*—I do not know, your Honour. I know the hand writing of the prisoner. I have seen him write frequently.

*Attorney General.*—Did you ever, Sir, see in a letter, a paragraph in the hand writing of the prisoner, any thing relative to Mr. Keveny?

*Mr. Stuart.*—I object to the question, and at the same time can not refrain from expressing my surprise that the learned Crown Officer should put a question, which he knows, according to the very first rule of evidence, is illegal.

*Attorney General.*—I should contend, under the circumstances of this case, I am entitled to put this question. I prove Mr. McDonell, to whom the letter was addressed, is beyond the Rocky Mountains.

*Chief Justice Sewell.*—You do not prove that he is out of the jurisdiction of this Court, which must form the substratum for the admission of secondary evidence. Produce the letter, or prove that the person to whom it was addressed is beyond the jurisdiction of this court. You know that, in every case, that is the rule.

*Solicitor General.*—Undoubtedly, your Honour, that is the rule, but probably your Honour will agree with us that this is not an analagous case, and that, having proved Mr. McDonell to be beyond the Rocky Mountains, we have proved sufficient to entitle us to introduce this secondary evidence as the best which the nature of the case affords.

*Chief Justice Sewell.*—The answer is clear, if you only read the words of the statute upon which the indictment is founded. “That from and after the “passing of this act, all offences committed within “any of the Indian Territories, or parts of America not within the limits of either of the said Provinces of Upper or Lower Canada, or of any civil

“government of the United States of America,  
 “shall be, and be deemed to be, offences of the  
 “same nature, and shall be *tried in the same man-*  
 “*ner*, and subject to the same punishment, as if  
 “the same had been committed within the Province  
 “of Lower or Upper Canada.

*Attorney General.*—It is not proved by this witness, but that Mr. McDonell is in the United States. But I should contend that, in proving he had gone into an unexplored country, we have proved sufficient to let in the evidence we present. We wish to prove by a person who saw the letter, what its contents are, and we offer this as the best evidence in the absence of the letter, and under the impossibility of producing McDonell, to whom it was addressed.

*Chief Justice Sewell.*—Do not let me mislead you, or let you fall into error, Mr. Attorney, on the one hand, or misunderstand you on the other. The basis of your argument I take to be this, that M<sup>r</sup>. Donell is not to be produced from peculiar circumstances. If I am in error, set me right. If that is your position, we reply, you have not proved that he is out of the jurisdiction of this Court, and till you do that, you know, equally as well as the Court, that you can not be permitted to introduce secondary testimony.

*Attorney General.*—The basis of the argument upon which I contend for the right of producing evidence of the contents of this letter is, that the best evidence on the subject, namely the letter itself, is lost. That being the case, I submit, in examining a person competent to speak as to its contents, from having actually seen the letter, that I am offering evidence which ought to be admitted. However, I will proceed with the examination, and when I come to prove the contents of the letter, my learned friends can make their objections.

*Examination resumed by the Attorney General.*

*Heurter.*—J'ai vu une lettre écrite dans le mois de Septembre 1816, et signée avec la signature de Dease. Elle étoit adressée au propriétaire en charge du poste de Bas de la Rivière. Je connois bien l'écriture du prisonnier. Je l'ai vu écrire plusieurs fois. <sup>(10)</sup>

*Attorney General.*—Did you ever see in the hand writing of the prisoner a letter, or part of a letter, giving an account of what had become of Keveny?

*Mr. Stuart.*—I object to that question.

*Chief Justice Sewell.*—Do you mean, Mr. Attorney, in this letter you are speaking of, or some other which you intend to produce?

*Attorney General.*—I ask him if in this, or any, letter?

*Heurter.*—Au troisième page de la lettre de Mons. Dease, il y avoit de l'écriture du prisonnier en crayon. <sup>(11)</sup>

*Mr. Stuart.*—Stop, Mr. Heurter. Surely, your Honour, unless the letter is produced, the Attorney General will not be allowed to examine in this manner.

*Chief Justice Sewell.*—Yes, Mr. Stuart, all that has come out as yet is undoubted evidence. As a fact, the Attorney General shews that this witness knows the hand writing of the prisoner, and that he saw some of it in pencil in a letter written by a Mr. Dease. The contents of this writing is not as yet attempted to be made evidence.

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(<sup>10</sup>) I saw a letter written in the month of September, 1816, and signed with the signature of Dease. It was addressed to the partner in charge of the post of Bas de la Riviere. I am well acquainted with the hand writing of the prisoner. I have often seen him write.

(<sup>11</sup>) On the third page of Mr. Dease's letter, there was some writing of the prisoner's in pencil.

*Attorney General.*—I shall first trace the letter to Mr. McDonell's hands and then offer the contents in evidence. Do you know a Savage named José, commonly called Fils de la Perdrix Blanche?

*Heurter.*—Oui, je le connois, et c'étoit lui qui portoit la lettre avec un nommé Allemagne, et je l'ai vu la donner à Mons. McDonell. Le lendemain j'ai vu une lettre sur la table de l'appartement de Mons. M'Donell, elle étoit ouverte alors, et je l'ai lu. <sup>(42)</sup>

*Chief Justice Sewell.*—How do you know this to be the letter brought by the Savage José? The letter was not open, nor did you examine it, I suppose, at the moment that it was brought.

*Heurter.*—Je ne puis pas dire tout à fait que c'étoit la même lettre. Je ne suis pas bien sur que c'étoit la même lettre, non pas bien sur. <sup>(43)</sup>

*Chief Justice Sewell.*—Very well, now remember, you are not to speak as to the contents of that part of any letter which was in the prisoner's hand writing, whether it may make for, or against him. You saw a letter brought by José, and given by him and one named Allemagne, to Mr. McDonell. Subsequently, namely, on the next day, you saw a letter on the table of Mr. McDonell, and in that letter was something in the hand writing of the prisoner at the bar; what that something was (at present at least) you must not tell us.

*Examination resumed by the Attorney General.*

*Heurter.*—C'étoit José qui portoit la lettre, et je l'ai vu la donner à Mons. McDonell. Suivant la

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(<sup>42</sup>) Yes, I know him, and it was he who carried the letter, together with a man of the name of Allemagne, and I saw him give it to Mr. Macdonell. The next day I saw a letter on the table in Mr. Macdonell's apartment; it was then open, and I read it.

(<sup>43</sup>) I can not wholly say that it was the same letter. I am not quite sure that it was the same letter, not quite sure.

rumeur Mons. M'Donell est à l'autre côté des Montagnes des Roches. <sup>(44)</sup>

*Attorney General.*—You saw the letter delivered to him at Bas de la Rivière by the Savage?

*Heurter.*—Oui, je l'ai vu.

*Attorney General.*—Et le lendemain vous l'avez vu sur la table de Mons. McDonell. <sup>(45)</sup>

*Chief Justice Sewell.*—Stop, Mr. Attorney General. Do not talk of *the* letter. Of *a* letter upon Mr. McDonell's table you may. I stopped the witness when you were questioning him upon this point before, and he very properly said that he could not say that the letter, which he spoke of as having seen on Mr. McDonell's table, was *the* letter which was the day before brought by the Indian. Ask him about *a* letter, or fifty, if you think it of any importance, but not about *the* letter, as he has fairly, and honourably to himself, told us that he can not say that it was the same letter.

Avez vous vu *une* lettre sur la table de Mons. McDonell et quand?

*Heurter.*—Le lendemain j'ai vu une lettre sur sa table avec la signature de Mons. Dease. C'étoit adressée au propriétaire en charge au fort au Bas de la Rivière. Je ne sais pas qui prendroit cette lettre. Je ne l'ai pas vu depuis, et je ne sais pas ce qu'elle est devenu.

*Chief Justice Sewell.*—Qui étoit alors en charge du fort au Bas de la Rivière?

*Heurter.*—Mons. McDonell étoit alors le propriétaire en charge du poste au Bas de la Rivière. <sup>(46)</sup>

(<sup>44</sup>) It was Joseph who brought the letter, and I saw him give it to Mr. Macdonell. According to report, Mr. Macdonell is on the other side of the Rocky Mountains.

(<sup>45</sup>) H.—Yes, I saw it.

A. G.—And the next day you saw it upon Mr. McDonell's table?

(<sup>46</sup>) On the following day I saw a letter on his table, with the signature of Mr. Dease. It was addressed to the partner

*Attorney General.*—And, to the best of your knowledge and belief, as well as according to general report, he is now beyond, or on the other side of, the Rocky Mountains?

*Heurter.*—It is generally understood that he is there.

*Attorney General.*—I submit that we have now shewn sufficient to entitle us to produce evidence of the contents of this letter. We have shewn that witness saw a letter brought by José, one of the three persons in whose company Keveny was left the last time he was seen, and that it was not only brought in the month of September, the month in which Keveny was murdered, but written and dated in that month. We have shewn that the day following a letter, (whether *the* letter, is I think a question for the jury,) was seen by the witness on the table of Mr. McDonell, addressed to the proprietor in charge of the post at Bas de la Rivière, and that Mr. McDonell was the proprietor in charge. We have shewn that in this letter, written by Mr. Dease, there was a postscript in the hand writing of the prisoner, and we have finally shewn, that, according to general report, Mr. McDonell, to whom the letter was addressed as proprietor in charge, and into whose possession it came, has disappeared, and is, according to general belief, where it is impossible to reach him, namely, in the wilderness beyond the Rocky Mountains. I therefore submit to the Court that we have gone quite far enough to entitle us to put to this witness the question, “what

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in charge of the fort at Bas de la Rivière. I do not know who would take that letter. I have not seen it since, and I do not know what has become of it.

C. J. S.—Who was then in charge of the fort at Bas de la Rivière?

H.—Mr. Macdonell was at that time the partner in charge of the post at Bas de la Rivière.

"did you see, in the hand writing of the prisoner, contained in a letter from Mr. Dease, dated in "Sept. 1816, and addressed to the proprietor in "charge at Bas de la Rivière?" and I also contend that, under the circumstances which I have shewn, it is a question properly belonging to the Jury to determine, what influence a letter being brought the very day before by José, ought to have upon their minds, in deciding whether the letter containing the hand writing of the prisoner was not the *very letter* brought by the Indian, who was present at the time of the murder!

*Mr. Stuart.*—In reply to the Attorney General—

*Chief Justice Sewell.*—It is not necessary, Mr. Stuart, that you should trouble yourself. Let us for an instant look at the case as at this moment it presents itself to our view, and what does all that the Crown Officers contend they have proved amount to? Why to this, and nothing more. They have proved that at the time that Mr. McDonell was in charge of the post of Bas de la Rivière, a letter was brought addressed to the proprietor in charge, and that, on the following day, the witness in the box, saw, upon the table of Mr. McDonell, a letter, which he read, from a Mr. Dease, containing a paragraph in the hand writing of the prisoner at the bar. So much for the letter. With respect to Mr. McDonell, the evidence goes this length, that, according to common report, or general belief, he is on the other side of the Rocky Mountains. Upon shewing this, you ask to prove, by this witness, the contents of a letter that was once in his possession. Why should you be allowed to do so? you say because we can not produce any better evidence. But you can not legally substantiate this assertion. *Prima facie*, better evidence is in your



power. Mr. McDonell is, upon your own shewing, within the jurisdiction of this Court, agreeably to the act upon which you have indicted the prisoner.

*Attorney General.*—He is beyond the Rocky Mountains, your Honour.

*Chief Justice Sewell.*—It is no matter where he is, if you do not shew that he is beyond the power of a process of this Court, as established by the act for extending our jurisdiction to the trial and punishment of offences, committed in the Indian Territories, you are certainly not producing the best evidence in producing this witness. The act provides for the issuing of subpoenas, and the enforcing obedience to them, and also declares that all offences tried under, or by authority of, this act shall be tried in the same manner as if the same had been committed within the Province. You would not, I am sure, ask such an admission for secondary evidence on a trial for an offence committed in this district, and the act of 1803 being positive, we can not allow it, on an investigation into one charged to have been committed in the Indian Territory, because the one and the other are equally within our jurisdiction, or your indictment must fall.

*Attorney General.*—It would be perfectly nugatory to issue a subpoena to be served beyond the Rocky Mountains. I imagine no person, excepting Sir Alex. McKenzie, would be found to undertake the journey.

*Chief Justice Sewell.*—I can not help that. If the legislature has done right, or if it has done wrong, in passing this act, I am not to enquire. We sit here, not to make or amend laws, but to administer such as are made.

*Examination resumed by the Attorney General.*

*Heurter.*—I saw the prisoner at the bar at Red River, at Fort Douglas; I had heard of the death

of Keveny before I saw him. Je l'ai demandé où il avoit laissé De Reinhard, et il m'a répondu qu'il l'avoit laissé au Lac la Pluie avec deux hommes, (voyageurs,) et un petit canot, pour l'avertir, ou lui donner d'intelligence au Fort Douglas, si Mi Lord Selkirk s'avançoit avec ses gens vers le Lac la Pluie. <sup>(47)</sup> I saw a trunk at Red River belonging to Mr. Keveny. J'ai vu un pupitre portatif, et une valise ronde, à la Rivière Rouge, qui avoient appartenus à Keveny. Il y avoit des planches de cuivre marquées du nom de Keveny. Le nom de Keveny étoit sur tous les deux, sur le pupitre portatif, et sur le coffre. De Reinhard m'a envoyé par le prisonnier, à ce qu'il a dit, l'ordre de lui acheter un cheval. Le prisonnier m'a dit que je pouvois employer le butin dans le coffre de Keveny pour acheter un cheval, en me disant que De Reinhard avoit assez de butin à lui pour payer le cheval, et qu'il n'avoit pas besoin de prendre un cheval du magasin. Dans le mois de Decembre qui suivait, j'ai vu la cassette et le pupitre portatif de Keveny au Fort Douglas. J'ai voulu emporter la cassette de De Reinhard là où je demourois. Le prisonnier m'a dit que je ferois mieux d'emporter la cassette et le pupitre de Keveny, craignant que les Anglois, ou la Colonie de la Rivière Rouge, ne viendroient au fort bientôt, et reconnoitroient la cassette et le pupitre de Keveny. <sup>(48)</sup> I formerly was a serjeant in the

(<sup>47</sup>) I asked him where he had left De Reinhard; he answered me that he had left him at Lake La Pluie, with two men, (voyageurs,) and a small canoe, to apprise him, or send him word, at Fort Douglas, whether my Lord Selkirk advanced with his people towards Lake La Pluie.

(<sup>48</sup>) I saw a portable desk, and a round trunk, at Red River, which had belonged to Keveny. There were brass plates on them marked with the name of Keveny. The name of Keveny was both upon the portable desk and upon the trunk. De Reinhard sent to me by the prisoner, as he told me, an order to buy him a

Meuron regiment, and was employed as clerk to the regiment. After the disbanding of the regiment, I went into the Indian Territory in the service of the North West Company.

*Cross examination conducted by Mr. Stuart.*

*Heurter.*—Je ne me rappelle pas s'il y avoit quelqu'un présent à ces conversations mais cela pourroit être. Je ne puis pas dire mais c'est possible qu'il y avoit. J'étois en connoissance avec De Reinhard quand nous étions au même regiment. Il étoit ami de moi.

*Mr. Stuart.*—Où est ce que vous avez reçu le butin de Keveny ? <sup>(40)</sup>

*Chief Justice Sewell.*—He did not say that he received the butin, he said he saw a trunk and writing desk belonging to Keveny at Red River.

*Mr. Stuart.*—I know that, but I must repeat my question to the witness, and obtain an answer to it. Où est ce que vous avez reçu le butin de Keveny ?

*Heurter.*—Je l'ai reçu à Bas de la Rivière.

horse. The prisoner told me that I might make use of the things which were in Keveny's trunk to buy a horse, telling me that De Reinhard had property enough belonging to him to pay for the horse, and that there was no necessity to take a horse from the store.\* In the month of December following, I saw Keveny's trunk and portable desk at Fort Douglas. I wanted to take away De Reinhard's trunk to where I lived. The prisoner told me I had better take away Keveny's trunk and desk, in the fear that the English, or the Red River colony, might soon come to the fort, and might recognize Keveny's trunk and desk.

<sup>(41)</sup> H.—I do not recollect whether there was any one present at these conversations, but it might be the case. I can not say but it is possible that there was. I was acquainted with De Reinhard when we were in the same regiment. He was a friend of mine.

Mr. S.—Where was it that you received Keveny's baggage ?

\* Meaning to take goods from the store on De Reinhard's account, for the purchase.

*Mr. Stuart.*—*Bon.* <sup>(50)</sup> I have a series of questions to put to this witness, and I trust he will be left in my hands, as I assure the Court I shall not put an irrelevant question to him, but his examination will prove to be exceedingly important to the prisoner, and we must be permitted to take our own course in conducting it.

*Chief Justice Sewell.*—In conducting this trial, there are three parties, all in search of truth, and I trust equally desirous of impartial and strict justice, viz. the Crown, the Counsel for the prisoner, and the Court, but we must understand, when a difficulty appears, whether it is a real or an imaginary one, so that we, who can have no object but to do justice to both parties in conducting, or rather presiding over, the trial, may not by misconceiving fall into error.

*Mr. Stuart.*—A quel tems avez vous reçu ce butin, et de qui ?

*Heurter.*—Entre le quinzième et le dixseptième de Septembre 1816, j'ai reçu de butin de José Fils de Perdrix Blanche à Bas de la Rivière. Il y avoit un coffre oval-rond et un pupitre portatif dans un fourreau de toile, avec le nom de Keveny dessus. José m'a dit avoir rencontré De Reinhard, qui l'avoit chargé de me les remettre. M'Lellan n'étoit pas à Bas de la Rivière à ce tems, il étoit parti quinze jours auparavant pour le Lac la Pluie. Le même soir je les ai envoyés à Mons. McDonell dans sa chambre, mais il refusoit de les recevoir. Je lui disois qu'ils étoient envoyés par De Reinhard, mais il ne voulut pas les recevoir, et le lendemain matin il me les renvoya dans ma chambre. Je n'y étois pas au moment. A mon retour j'ai demandé à

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(50) *Mr. S.*—Where was it that you received Keveny's baggage ?

*H.*—I received it at Bas de la Riviere.

*Mr. S.*—Good.

Mons. McDonell pourquoi l'ame les avoit renvoyé, et il m'a dit qu'on parleroit sous peu pour la Rivière Rouge où je pourrois les envoyer ; ce que je fis. J'ai parti moi même quelques heures après pour la Rivière Rouge, et ces effets y furent portés dans la même brigade où j'étois. Je me suis rendu à Fort Douglas, où je restois une dizaine de jours. La conversation dont j'ai parlé, que j'avois tenu avec Mons. McLellan, étoit deux ou trois jours après son arrivée au Fort Douglas. Mons. M'Lellan est arrivé cinq ou six jours après moi, et c'étoit deux ou trois jours après qu'il arriva. Les gages de De Reinhard le mettoit en état d'avoir un cheval en ce pays là. Dans ce pays là on ne paye pas pour ce qu'on achète en argent, mais en marchandises, comme fusils, chemises, et hardes. J'ai effectivement acheté un cheval pour De Reinhard. Mons. M'Lellan ne m'a jamais donné un ordre pour six verges de drap. J'ai payé la moitié, ou peut être plus que la moitié, du prix du cheval, quarante neuf piastres, en chemises et mouchoirs. <sup>(51)</sup>

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(<sup>51</sup>) Between the fifteenth and seventeenth of September, 1816, I received some things from Joseph, fils de Perdrix Blanche, at Bas de la Riviere. There was an oval-round trunk and a portable desk in a canvas cover, with the name of Keveny thereon. Joseph told me that he had met De Reinhard who had desired him to deliver them to me. M'Lellan was not at Bas de la Riviere at that time, he had left it a fortnight before for Lake La Pluie. The same evening, I sent them to Mr. Macdonell into his room, but he refused to receive them. I told him that De Reinhard had sent them, but he would not receive them, and next morning he sent them back into my room. I was not there at the time. On my return I enquired of Mr. Macdonell why he had sent them back to me, and he told me that in a few days a party would be going to Red River whither I might send them, which I did. A few hours afterwards I took my departure myself for Red River, and those things were conveyed thither in the same brigade in which I was. I went to Fort Douglas, where I remained ten days. The conversation which I mentioned as having held with M'Lellan, occurred two or three days after his arrival at Fort Douglas. Mr. M'Lellan arrived five or six days

JOCELYN WALLER, *Esquire, sworn and examined by the Attorney General.*

*Mr. Waller.*—I am Clerk of the Crown, and of the Court now sitting. I have the record of the conviction of Charles De Reinhard in this Court of Oyer and Terminer, for the murder of Owen Keveny. I can produce it. I have it here.

*Attorney General.*—I move that the said record be produced and read.

*Chief Justice Sewell.*—Let it be read.

*The Clerk of the Crown accordingly read the record.*

*Attorney General.*—That is the case on the part of the Crown.

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## DEFENCE.

NICHOLAS DUCHARME, *sworn, and examined by Mr. Vanfelson.*

*Ducharme.*—J'étois dans les pays Sauvages dans l'été de 1816; et dans le mois d'Aout ou Septembre de cette année, j'étois guide d'une brigade du Nord Ouest qui alloit à la Rivière des Cygnes. Il y avoit dans cette brigade un nommé Augustin Poirier dit De Lorge, un voyageur. Je le connois depuis dix ans. Dans le tems que De Lorge'étoit

after me, and it was two or three days after he arrived. De Reinhard's wages were such that he could afford to have a horse in that country. In that country one does not pay for what one buys in money, but in goods, such as guns, shirts, and clothes. I did in fact purchase a horse for De Reinhard. Mr. M'Lellan never gave me an order for six yards of cloth. I paid the half, or perhaps more than the half of the price of the horse, forty nine dollars, in shirts and handkerchiefs.

avec moi, nous rencontrions le prisonnier avec quatorze autres personnes en bas des Dalles. Nous avons mis à terre en les voyant. Mons. Archy étoit à terre, il m'a dit, "bonjour, Ducharme," et ensuite il demandoit, "combien y a-t-il de tems que vous êtes parti du Grand Portage?" et je l'ai dit, qu'il n'avoit pas mal long tems parceque les vents avoient été frequens et contraires. J'ai parlé à ceux de ses gens que je connoissois, et j'ai allumé ma pipe. Il y avoit un jeune monsieur avec nous autres qui montoit de Montreal. C'étoit Mons. Viger. Je l'ai fait connoître au prisonnier. Après quelques tems j'ai dit à Viger, "il faut embarquer," ou qu'il avoit mieux embarquer. Il m'a dit qu'il falloit esperer, que Mons. Archy voulut prendre quelque chose dans le canot parcequ'il n'avoit pas de quoi vivre. Mons. M'Lellan a pris ce qu'il vouloit de rum, d'ammunition, &c. <sup>(52)</sup>

*Mr. Tanselson.*—Ecoutez Ducharme. Pendant ce tems Mons. M'Lellan a-t-il dit quelque chose de Keveny, et s'il en a dit la moindre chose, qu'est ce qu'en-t-il?

(<sup>52</sup>) I was in the Indian Territory in the summer of 1816, and in the month of August or September in that year I was guide of a North West brigade, destined for Swan River. In this brigade there was a man named Augustin Poirier dit De Lorge, a voyageur. I have known him for ten years. At the time De Lorge was with me, we met the prisoner with fourteen other persons below the Dalles. On seeing them we put on shore. Mr. Archy was on shore; he said to me, "good morning, Ducharme," and then he asked me, "how long is it since you left the Grand Portage?" and I told him it was not a little time, as the winds were frequent and contrary. I spoke to those of his people whom I knew, and I lit my pipe. There was a young gentleman from Montreal who was going up with us. It was Mr. Viger. I introduced him to the prisoner. After a while I said to Viger, "we must embark," or, "it is better to embark." He replied that it was to be wished that Mr. Archy should take something in his canoe, as he had not enough to live on. Mr. M'Lellan took what he wanted of rum, ammunition, &c.

*Ducharme.*—Il ne parloit pas de Keveny pendant tout le tems que j'étois là. Il ne m'a aucunement parlé de Keveny, pas un mot, ni au train.

*Mr. Vanfelson.*—Comme vous étiez le guide, si le prisonnier en avoit parlé, il vous en auroit parlé ?

*Ducharme.*—Oui, assurément, mais il n'a pas parlé un seul mot de Keveny. Pendant que Mons. M'Lellan prenoit ce qu'il vouloit dans mon canot, un metif, est venu, et m'a demandé si j'avois vu Keveny, et je l'ai dit que je l'avois vu en haut des Dalles. J'ai dit que j'ai connu De Lorge depuis dix ans, je crois que c'est douze ans que je le connoissois. Il a toujours eu parmi nous un chetif caractère, un très mauvais caractère.

*Mr. Vanfelson.*—Parle-t-il la vérité en general ?

*Ducharme.*—Assurément non.

*Mr. Vanfelson.*—D'après tout ce que vous avez connu, et que vous avez vu, de De Lorge, est il digne de croyance sur son serment, ou le croiriez vous sur son serment ?

*Ducharme.*—Non, je ne le croirois pas sur son serment.

*Mr. Vanfelson.*—A présent je voudrois savoir, Ducharme, dans le tems que votre brigade a rencontré le canot de Mons. M'Lellan, a-t-il demandé de vous, Colishe, si vous aviez eu connoissance en chemin de Mons. Keveny, et si vous y avez répondu, et ce que vous avez dit ? Rappelez vous bien.

*Ducharme.*—Non, il ne m'en a demandé rien. Mons. Archy ne m'a parlé de Keveny.

*Mr. Vanfelson.*—Encore, je voudrois savoir si Mons. Archy, le prisonnier, vous a demandé, "comment Keveny fesoit pour vivre," et si vous avez répondu, "que quelquefois il voloit, et quel-quefois il achetoit ?"

*Ducharme.*—Non, point de tout, ni l'un ni l'autre.



*Mr. Vanfelson.*—Je voudrais encore demander ; avez vous entendu M'Lellan dire, “ Hé bien ! c’est “ bon, il ne volera pas long tems, demain à ces “ heures son affaire sera faite ? ” ou rien autre chose de Mons. Keveny ?

*Ducharme.*—Non, point de tout, Mons. Archy ne m’a pas parlé un seul mot de Keveny. J’en suis sur. <sup>(53)</sup>

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<sup>(54)</sup> *Mr. V. F.*—Listen Ducharme. During that time did Mr. M’Lellan say any thing about Keveny ? and if he said the least thing about him, what was it ?

*D.*—He said nothing about Keveny all the time I was there. He did not say one single word to me about Keveny, nor to the people.

*Mr. V. F.*—As you were the guide, if the prisoner had said any thing about him, it would have been to you.

*D.*—Yes, certainly, but he did not say a single word about Keveny. While Mr. M’Lellan was taking what he wanted in my canoe, a half-breed came and asked me whether I had seen Keveny, and I told him that I had seen him above the Dalles. I have said that I knew De Lorge for ten years, I believe that it is twelve years that I have known him. He always bore an indifferent character amongst us, a very bad character.

*Mr. V. F.*—Does he generally speak the truth ?

*D.*—Certainly not.

*Mr. V. F.*—According to all that you have known, and all that you have seen, of De Lorge, is he worthy of belief upon his oath, or would you believe him upon his oath ?

*D.*—No, I should not believe him upon his oath.

*Mr. V. F.*—Now I should like to know, Ducharme, at the time that your brigade met Mr. M’Lellan’s canoe, did he ask of you, Colishe, whether you had learnt any thing on the way about Keveny, and if you replied, what it was that you said ? recollect yourself well.

*D.*—No, he asked me nothing. Mr. Archy did not speak to me about Keveny.

*Mr. V. F.*—Again, I should like to know whether Mr. Archy, the prisoner, asked you, “ how Keveny managed for his living ? ” and whether you answered that “ sometimes he stole, and sometimes he bought victuals ? ”

*D.*—No, not at all, neither one nor the other.

*Mr. V. F.*—I wish further to ask ; did you hear M’Lellan say “ good, very well, he will not steal a long while, to-morrow by

*Mr. Vanfelson.*—I should now wish that De Lorge should be brought into Court, that the jury may be satisfied the witness on the part of the crown is the same De Lorge that this man has reference to, when he says he is not worthy of belief upon his oath.

*Augustin Poirier dit De Lorge came in Court.*

*Mr. Vanfelson.*—Est celà le nommé De Lorge de qui vous avez parlé?

*Ducharme.*—Oui.

*Mr. Vanfelson.*—Je voudrois encore vous demander ; au tems qu'un bois brulé vous a demandé si vous avez vu Keveny, et que vous avez repondu, "oui, il est en haut des Dalles;" les bois brulés ont ils jetté un cri de joie, et disoient *ils* qu'il ne vleit pas long tems.

*Ducharme.*—Non, assurément non. Il n'y avoit que ce seul mot. Il n'y a pas eu un cri de joie par les gens de M'Lellan, ni point de tout. <sup>(54)</sup>

*Mr. Vanfelson.*—I beg the Court to notice that, because it refers to a part of La Pointe's testimony.

Dans les pays Sauvages, sous quel nom êtes vous connu ?

this time his business will be done," or any thing else about Mr. Keveny.

D.—No, not at all, Mr. Archy did not say a single word to me about Keveny. I am sure of it.

<sup>(54)</sup> *Mr. V. F.*—Is this the man named De Lorge, of whom you spoke?

D.—Yes.

*Mr. V. F.*—I would wish further to ask of you ; at the time that a half-breed enquired, whether you had seen Keveny, and that you answered, "yes, he is above the Dalles," did the half-breeds shout for joy, and did *they* say that he would not steal a long time?

D.—No, certainly not. That was all that was said. There was no shout amongst M'Lellan's people, nor any at all.

*Ducharme.*—Je suis généralement connu dans les pays Sauvages sous le nom de Colishe Ducharme. <sup>(55)</sup>

*Cross examination conducted by the Attorney General.*

*Ducharme.*—Je suis au service de la Compagnie du Nord Ouest. C'est l'an vingt-sixième que je suis au service de la Compagnie. Je suis bien payé, et je suis dans leur service encore. Mons. M'Lellan n'a pas parlé un mot, non pas un seul mot, de Mons. Keveny, ni à moi, ni à aucun autre dans le canot. En descendant j'ai vu une tente; la tente de Mons. Keveny, à ce que je crois. Je l'ai vu à neuf heures du matin, et c'étoit vers deux heures du même jour, que j'ai rencontré le prisonnier. Je n'ai pas dit à Mons. Archy que je l'ai vu. Je n'ai pas parlé un mot de Keveny. J'ai connu De Lorge depuis douze années, et son caractère est chetif et mauvais.

*Attorney General.*—Comment savez-vous que son caractère est mauvais?

*Ducharmes.*—Je le considère comme mauvais, parcequ'il a deserté de son canot, et il a généralement un mauvais caractère.

*Attorney General.*—Mais dites moi ce qu'il a fait de mauvais. <sup>(56)</sup>

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<sup>(55)</sup> Mr. V. F.—By what name are you known in the Indian country?

D.—I am generally known in the Indian country by the name of Colishe Ducharme.

<sup>(56)</sup> D.—I am in the service of the North West Company. This is the twenty sixth year that I am in the service of the Company. I am well paid, and I am still in their service. Mr. M'Lellan did not speak one word, not one single word, about Mr. Keveny, neither to me, nor to any other in the canoe. In going down I saw a tent; the tent of Mr. Keveny, as I believe. I saw it at nine o'clock in the morning, and it was about two o'clock on the same day that I met the prisoner. I did not tell Mr.

*Chief Justice Sewell.*—I do not consider that a proper question for you to put. You may enquire, generally, into his means of acquiring a knowledge of his character, but not as to particular acts. You may enquire how he acquired his knowledge of De Lorge's general character, but you can not try character by asking as to particular acts.

*Mr. Stuart.*—I beg to mention that rather than it should go abroad that there was any wish on our part to conceal any thing, we did not object to the question, though certainly illegal and inadmissible. If the Court think proper to allow it to be put, we shall make no objection. We have nothing to oppose to it, indeed, after the broad manner in which we have attacked De Lorge, we have no right to complain of any question by which the Crown may endeavour to support their own witness.

*Chief Justice Sewell.*—The rule on this subject is exceedingly clear. The credit of a witness can only be impeached by general accounts of his character and reputation, and this witness speaks to the general character of De Lorge. Another rule relative to a defendant's character shews also the principle. If a defendant enable a prosecutor to examine evidence as to his character by calling witnesses in support of it, even then the prosecutor can not examine as to particular facts, neither can you ask this witness as to the particular facts on which he founds his opinion.

*Attorney General.*—With great deference I think this does not touch upon the subject; that it is not

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Archy that I had seen him. I did not say one word about Keveny. I have known De Lorge for twelve years, and his character is indifferent and bad.

A. G.—How do you know that his character is bad?

D.—I consider it as bad, because he deserted from his canoe, and he in general bears a bad character.

A. G.—But tell me, what has he done that is bad?

an authority applicable to the point under consideration. This man says he considers De Lorge a bad man because he has deserted. A great deal may come out on that point.

*Chief Justice Sewell.*—Then shew me what does apply to it. It has been my authority for upwards of twenty five years at the bar and on the bench, and will remain so till I am convinced I am in error. If different principles should govern our decisions, shew us the authorities by which they are supported, and we will embrace them, if they convince us that we have previously been wrong, though for years we have been governed by this and similar authorities.

*Mr. Stuart.*—I think I have a right to complain of one part of my learned friend's conduct, which is, that he should represent that it is only because De Lorge deserted that we consider, or rather have proved, him to be a bad man. The very reverse is the fact. We proved him to be unworthy of belief upon oath by this witness, whose character we shall support by the most respectable testimony, and we shall also produce additional evidence as to the total worthlessness of this man, De Lorge, from almost innumerable circumstances.

*Chief Justice Sewell.*—If to his general character, you may undoubtedly examine witnesses as long as you like, if it is to particular facts you wish to go, and thence to infer that his character generally is bad, you certainly can not. If you have fifty witnesses, bring them afterwards to attack those of the Crown, or to support your own if attacked, which is an alteration from the practice heretofore, and I think a very proper one.

*Cross examination resumed by the Attorney General.*

*Ducharme.*—J'ai vu la tente de Keveny en haut des Dalles à neuf heures du matin, et le même jour à deux heures de l'après-midi, j'ai rencontré Mons. M'Lellan. Je n'ai pas dit à Mons. M'Lellan que j'ai vu la tente, et je n'étois pas surpris de la voir, parce que c'est commun parmi les François. C'étoit une tente de toile ce que n'est pas commun parmi les Sauvages, mais parmi les Canadiens elles sont communes. Je n'ai pas vu une autre en allant ce tour là. <sup>(57)</sup>

*Mr. Stuart.*—I shall now call witnesses to support Ducharme's testimony, or rather his character for veracity. I shall call Colonel Fraser.

*Solicitor General.*—The course proposed by my learned friend is rather a novel, but perhaps in this case, a very necessary one. The general mode, I believe, is to consider a witness's evidence and character good, till they are attacked. My learned friend's witnesses appear to be an exception to the general rule, and he is, I suppose, going to give them a good character, from a conviction that the contrary may be attempted (how successfully I will not say, tho' certainly something like alarm is exhibited in this course,) to be established. It is not, however, a very regular, any more than a usual, practise.

*Mr. Vanfelson.*<sup>2</sup>—We have, by a witness, an entire stranger here, attacked the testimony of the

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(57) I saw Keveny's tent above the Dalles at nine o'clock in the morning, and the same day at two o'clock in the afternoon, I met Mr. M'Lellan. I did not tell Mr. M'Lellan that I had seen the tent, and I was not surprised at seeing it, because it is a usual thing amongst the French. It was a canvas tent, which is not common amongst the Indians, but amongst the Canadians they are common. I did not see any other in going that trip.

Crown, we certainly have a right to shew his character to the jury.

*Solicitor General.*—Oh certainly, I dare say it is very necessary.

*Chief Justice Sewell.*—Yes, you may do that.

*Solicitor General.*—We have not the slightest objection.

*Colonel ALEX. FRASER, sworn, and examined, by Mr. Vanfelson.*

*Col. Fraser.*—I know Nicholas Ducharme commonly called Colishe Ducharme. I have known him upwards of twenty years. His general character is most excellent.

*Cross examination conducted by the Attorney General.*

*Col. Fraser.*—I have been in the Indian Territory more than twenty years. I am not now a partner in the North West Company. I was a partner for almost twenty years, and I was in the country nine years before I was a partner.

*FRANCOIS TAUPIER, sworn and examined, by Mr. Valliere de St. Réal.*

*Taupier.*—Je connois Augustin Poirier dit De Lorge depuis quinze ou seize ans. Je le connoissois premièrement dans les pays Sauvages, où il a toujours resté, et moi aussi, jusqu'à ce que nous avons descendu. Personne n'avoit bonne opinion de lui, et on le consideroit comme un homme en qui c'étoit impossible d'avoir confiance. Je le considere ainsi moi même. D'après son caractère general il seroit impossible de le croire, même sur son serment. Je suis un voyageur, et j'ai souvent voyagé dans un canot allege. Je connois le port d'un tel canot. Ils ont entre vingt sept et vingt

huit pieds de gabare au long du fond. L'équipage d'un tel canot est de huit hommes à l'ordinaire, avec leurs provisions et butin, et deux ou trois bourgeois. Il seroit impossible de faire aucune marche avec seize hommes et leur butin et provisions. Il faudroit suivre le rivage, et cela même ne seroit pas sur. Il y a ordinairement à chaque canot un guide qui est maitre du canot, même quand les bourgeois y sont, et il met à terre comme il veut. En faute de guide, c'est le devant du canot qui est maitre. Si les bourgeois vouloient charger le canot plus que le guide ne trouve convenable, il a l'autorité de l'empêcher. Si le guide n'a pas voulu pour prendre un homme, il ne peut pas aller, parcequ'ils sont gens ayant connoissance du chemin et sont toujours maitres dans les canots. Quand les bourgeois ont des ordres à donner c'est au guide, ou au devant du canot. Je n'ai jamais vu en route que les bourgeois et les autres hommes conversent, excepté par nécessité, et ce n'est pas l'usage pour les hommes de jaser ensemble, parcequ'en parlant ils n'avancent pas. C'est ouvrage assez dur de nager, et pendant qu'on nage c'est nécessaire, ou il faut, qu'on parle bien fort pour s'entendre. S'il y avoit trois hommes sur une barre, on ne pourroit pas nager.

*Chief Justice Sewell.*—De quelle largeur est une barre?

*L'auquier.*—La barre du milieu est au bourgeois, et a quatre pieds de largeur. Celles des hommes sont de trois pieds et demi le premier contre les bourgeois, et en diminuant de l'une à l'autre. Je fais des canots. (58)

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(58) F. T.—I know Augustin Poirier dit De Lorge for fifteen or sixteen years. I knew him first in the Indian Territory, where he always lived, and I too, until we came down. . No one had a good opinion of him, and he was considered as a man in whom it



*Cross examination conducted by the Attorney General.*

*Taupier.*—Je suis au service de la Compagnie du Nord Ouest. Tous les engagés du Nord Ouest sont d'un bon caractère. Je n'ai connu que De Lorge qui n'étoit pas. Je demeure à Chambly. De Lorge étoit au service de la Compagnie du Nord Ouest six ou sept ans, et il a deserté. Il n'étoit pas déchargé pour mauvaise conduite. De Lorge a continué au service plusieurs ans. J'étois avec lui, et j'ai couché avec lui la nuit qu'il a deserté. Il a

was impossible to have confidence. I consider him in the same light my self. Taking his general character into consideration, it would be impossible to believe him, even upon his oath. I am a voyageur, and I have often voyaged in a light canoe. I know the burden of such a canoe. They are between twenty seven and twenty eight feet in length along the bottom. The crew of such a canoe consists generally of eight men with their provisions and baggage, together with two or three gentlemen. It would be impossible to make any progress with sixteen men and their baggage and provisions. It would be necessary to follow the windings of the shore, and that even would not be safe. In each canoe there is generally a guide who is master of the canoe, even when the bourgeois are on board, and he puts on shore as he likes. When there is no guide it is the front man (devant) of the canoe, who is master. If the bourgeois were inclined to load the canoe more than the guide thought right, he has power to prevent it. If the guide would not take a man on board, he can not go, for they are people who know the route, and are always masters in the canoes. When the gentlemen have any orders to give, it is to the guide, or to the front man (devant) of the canoe. I never knew that the gentlemen and the other men conversed together on the way, unless from necessity, and it is not the custom for the men to chatter to one another, for by talking they are prevented from getting on. It is hard enough work to paddle, and whilst paddling, it would be necessary, or it can not be avoided, to speak very loud, in order to understand one another. If there were three men upon a bar they could not paddle.

C. J. S.—Of what size is a bar?

F. T.—The middle bar is that of the bourgeois, and is of the size of four feet. Those of the men are, three feet and a half, the first next the bourgeois, and so on diminishing from one to the other. I am a canoe-maker.

deserté dans la nuit ; nous couchions ensemble, et le matin il étoit parti.

*Attorney General.*—Vous dites qu'il a deserté, que comprenez vous par desertion ?

*Taupier.*—Il me paroît qu'un homme deserte, si deux se couchent ensemble, et qu'au matin un est parti, et a volé le chapeau de l'autre ; et au matin quand je m'éveillois, j'ai trouvé qu'il étoit parti, et mon chapeau aussi. Je n'ai vu que huit hommes et les bourgeois dans un canot comme celui de Mons. McLellan. <sup>(59)</sup>

JAMES CHISHOLM M'TAVISH, *sworn, and examined by Mr. Stuart.*

*Mr. McTavish.*—I was formerly a clerk to the North West Company. We endeavour to select the best men ; that is, men of the best character we can, for employment. I know Augustin Poirier dit De Lorge, and have known him for several years, a part of which time he was in the service of the North West Company. I had, from my situation, means to know his general character. The general character of De Lorge was that he was a very

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<sup>(60)</sup> F. T.—I am in the service of the North West Company. All the servants of the North West Company are of good character. I knew only De Lorge who was not. I live at Chambly. De Lorge was six or seven years in the service of the North West Company, and he deserted. He was not discharged for bad conduct. De Lorge remained several years in the service. I was with him, and we slept together the night he deserted. He deserted in the night ; we slept together, and in the morning he was gone.

A. G.—You say he deserted, what do you understand by desertion.

F. T.—It appears to me that a man deserts, when two sleep together, and in the morning one is found to be gone, and to have stolen the hat of the other ; and in the morning when I waked I found he was gone off, and my hat with him. I never saw more than eight men and the bourgeois, in a canoe like that of Mr. McLellan.

disaffected servant, and not trustworthy. From what I know of him, and of his general character, I consider it so bad, that I would not believe him upon his oath.

*Chief Justice Sewell.*—I do not, Sir, exactly understand what you mean when you say that De Lorge was a disaffected servant. Would you explain what you would have us understand by the term?

*Attorney General.*—I feel obliged to your honour for putting the question, as it is quite a new term to me, as applied to servants; disaffected, I have always understood to mean disloyal, and I do not see how that is to apply to persons in their situations, as servants to a trading company.

*Mr. McTavish.*—I always found him a displeased and discontented servant; dissatisfied with every thing that was done, and extremely disaffected to the interest of his employers.

*Cross examination conducted by the Attorney General.*

*Mr. McTavish.*—I was eleven years in the service of the North West Company. We endeavoured always to select the best men we could for employment. De Lorge, to my knowledge, was eight years in the service of the North West Company. When I left the Indian Country he was either in the service of the Hudson's Bay Company, or of the Earl of Selkirk, having, as I understand, deserted the Company's service, before his engagement had expired.

*Attorney General.*—A person quitting the service of the North West Company, and entering into that of the Hudson's Bay, or of Earl Selkirk, would not, I believe, stand very high with the North West Company?

*Mr. M'Tavish.*—He would stand high with them after quitting, if he had finished his engagement like an honest man, but certainly not, if he went away before his term of engagement was up.

*Attorney General.*—You do not, I believe, engage persons in your service, but for a term of years, and they sign agreements before they go up?

*Mr. M'Tavish.*—Persons in the service of the North West Company generally enter into indentures for a term of years before they go up to the Indian Territory.

*Attorney General.*—And it is not an unusual thing, I believe, for persons who are dissatisfied, or, to use your own term, disaffected, to quit the service previous to their indentures expiring, by what you call desertion?

*Mr. M'Tavish.*—I have, during the eleven years that I was in the Company's service, known but few persons quit it before their indentures had expired, and among those who did, but very few who were honest men in other matters.

*Attorney General.*—How, Sir, is a person to be relieved from the service of the Company, if dissatisfied with it, except by what you call desertion?

*Mr. M'Tavish.*—Very easily. If persons go up to the Indian Territory, and do not find it suit them, upon applying to the Company, they are permitted to return as passengers, in the first canoes that are going to Montreal.

*Attorney General.*—I would again ask you, Sir, whether by disaffected, you mean that De Lorge was any thing more than a servant not quite satisfied with his employers? Was he quarrelsome?

*Mr. M'Tavish.*—By dissatisfied, I mean that he was a man not easily pleased, a discontented, dissatisfied, servant himself, and one who tried to

make others so. I can not say that he was particularly quarrelsome.

*It being past six o'clock, the Court was adjourned, till 8 o'clock A. M. on Monday morning.*

*Monday 15th June 1818, 8 o'clock A. M.*

PRESENT AS BEFORE.

*The Court being assembled, the jury were called over, and being all present.*

JEAN CREBASSA, sworn, and examined by Mr. Stuart.

*Mr. Crebassa.*—I was in 1816, and still am, a clerk in the North West Company's service. I have been so for upwards of sixteen years. The summer and autumn of that year, I was stationed at Bas de la Rivière Winnipic. I have knowledge that Mr. Keveny arrived there between the middle and latter end of August, but I do not recollect on what day it was. He was a prisoner, in custody of Charles De Reinhard, who was accompanied by a man named Castello, one called Matin, another La Plante, and two others, whose names I do not remember. He arrived at Bas de la Rivière, about two o'clock in the afternoon, and went away from there the next morning. They were sending him to Lac la Pluie, and thence to Montreal. Lac la Pluie and Fort William are in the usual route from Bas de la Rivière to Montreal. Louis Lacerte, La Plante, Michel Matin, and two others, whose names I have forgot, went with him.

*Mr. Stuart.*—Were not Vassall and Vaudrie the other two, do you think?

*Mr. Crebassa.*—Yes, they were the other two. Neither De Reinhard, Mainville, nor José Fils de

la Perdrix Blanche, accompanied him. We had no persons but bois brûlés at Bas de la Rivière when Keveny arrived, excepting two old Canadians, engagés, who were accustomed always to stay in the fort, and work at the farm, and in the garden. The distance between Bas de la Rivière and Lac La Pluie is about seven days march for a light canoe well manned, and nine or ten for a loaded one. Four or five days after, Alexander McDonell arrived at Bas de la Rivière. He staid one day there, and then proceeded to Rivière Rouge his usual post. The capture of Fort William was not then known. Four or five days after, we received information from Mr. Stuart, who came to Bas de la Rivière, that Fort William had been taken by the Earl of Selkirk. Mr. Stuart came in purposely to communicate this information to us, and to other of the North West posts. It is two days march from the first post at the Forks of Red River to Bas de la Rivière, and information of this circumstance was communicated to Red River, and Mr. McDonell came down in one day after.

*Mr. Stuart.*—I understood you that it was two days march, how did Mr. McDonell come in one?

*Mr. Crebassa.*—He came down in one day, that is, he set off in one day after the information was received by him, and arrived at Bas de la Rivière in six or seven days after the communication had been forwarded to Red River.

*Mr. Stuart.*—There is one question occurs to me which I ought to have put at an earlier stage. Was Mainville at Fort Bas de la Rivière when Keveny first went down to Lac la Pluie?

*Mr. Crebassa.*—He was.

*Chief Justice Sewell.*—I will then make a former part of the evidence read thus in my notes, "Main-

ville did not go with him, but was at the fort at the time he went away."

*Mr. Stuart.*—Did the capture of Fort William occasion any extraordinary feeling at Bas de la Rivière?

*Mr. Crebassa.*—The capture of Fort William occasioned great anxiety lest the ordinary supplies should not come, as Fort William is the usual channel through which supplies come to the interior, and very great injury was apprehended to the trade. Personal injuries were also anticipated to the partners, and others accustomed to trade with the North West Company. In the first place we apprehended great danger from the want of provisions, as, if we did not receive our usual supplies from Fort William, having no merchandize, we could not barter with the Indians for provisions; and if we had not wherewith to buy food from the Indians, we must certainly starve. We were also in want of nets for fishing, as we depend a good deal on that source for supplies in that country.

*Mr. Stuart.*—It became then a very serious matter to you if you had neither merchandize to barter with Indians, nor fishing-nets, as of course without them you could catch no fish. Did you, Sir, or the gentlemen at Bas de la Rivière, take any step in consequence of this state of things, and what measures was adopted?

*Mr. Crebassa.*—It was in consequence determined to fit out a canoe, to go in the direction of Fort William, and see whether any canoes were coming into the interior. This canoe proceeded the day after Mr. McDonell's arrival, and Mr. McLellan went with it, as it was considered an object of sufficient importance that the principal partner at the station should go. There also went in the canoe, Cuthbert Grant, Joseph Cadotte, Charles De Rein-

hard, Mr. McLellan's body-servant Rochon, one Lorrain, Michel Matin——

*Chief Justice Sewell.*—You stated, Sir, some time ago, that this Michel Matin went in the canoe with Keveny when he was sent to Lac la Pluie. Here is some mistake, I fear. He could not have gone with Keveny and then go with Mr. McDonell.

*Mr. Crebassa.*—He did go with Mr. Keveny, but when Mr. McDonell met them, he put Mr. Keveny in charge of Faye and others, and Matin returned with Mr. McDonell to Bas de la Rivière, and now accompanied Mr. McLellan to go and look for the canoes.

*Mr. Stuart.*—Do you recollect any others who went?

*Mr. Crebassa.*—Yes. Le Vasseur, La Plante, Vassalle, Vaudrie, Lorrain, and some others, I believe; they had all returned when Mr. McDonell went up to his station.

*Mr. Stuart.*—I beg that may be taken down.

*Chief Justice Sewell.*—Did Mainville go with them?

*Mr. Crebassa.*—Yes, he did.

*Examination Resumed by Mr. Stuart.*

*Mr. Crebassa.*—Un canot peut faire quarante cinq milles par average <sup>(60)</sup> Mr. McLellan returned to Bas de la Rivière, twelve or fifteen days after he had left it, to the best of my recollection. De Reinhard was not with him when he arrived. He arrived about three o'clock in the afternoon, and remained there that and the next day, and on the day next but one after, he went to the Forks of Red River, which was his station. I am acquainted with Mr. Heurter. He was, I believe, at the time, a

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(60) A canoe can go, upon an average, forty five miles.



clerk in the service of the North West Company, as he was acting as such. Heurter had left Fort Bas de la Rivière previous to Mr. McLellan's arriving there. He did not leave alone, but with a brigade for Red River, where he was going to winter. There are several posts on the Red River, and the stationing the different persons is regulated at Red River, whither Mr. Heurter was going, and he would proceed afterwards to such station as his employers might appoint him to. The first time I saw Heurter afterwards, was at the Forks of Red River, and he was then in the service of the North West Company; this was in the month of March following. Rochon and Vasseur were, I think, the only engagés who went in the canoe with McLellan, the others went from feeling a common interest in ascertaining whether canoes were coming into the interior. They went voluntarily. When Keveny arrived at Bas de la Rivière, he was in custody of De Reinhard. It is not usual to have handcuffs at the North West posts, nor were there any at Bas de la Rivière that I know of at the time Keveny was there. Had there been any there, as I was chief clerk, I think I must have known it.

*(One of the jury was reported to be sick and Doctor Fargues was sent for.)*

*Mr. Crebassa.*—When Keveny first went from Bas de la Rivière, Mr. McLellan told Lacerte and the others to take good care of him, and to treat him kindly. I heard him give these directions.

*Cross examination conducted by the Attorney General.*

*Mr. Crebassa.*—It was about four or five leagues distance from Bas de la Rivière, higher up, where Keveny was apprehended by De Reinhard. The canoe in which McLellan went away had no other

object in view than to ascertain if provisions and goods were coming into the interior. The persons who went were armed, according to the custom of the country, that is every man had his gun. I heard instructions given by McLellan to be kind to Keveny, and to take care of him. They were given to five bois brulés. The bois brulés are half Indians.

*Attorney General.*—Had either of these bois brulés ever been at Montreal?

*Mr. Crebassa.*—Lacerte had been at Montreal. I do not know for the others.

*Attorney General.*—His having been there could not, I believe, teach him much of the way. He went when he was a child, did not he?

*Mr. Crebassa.*—Yes, he went down when a child, and returned when he was a man.

*Dr. Fargues was then sworn to examine the jurymen as to the state of his health, and to report to the Court his opinion whether the juror was capable of sustaining the fatigue of attending to the trial. The Doctor, shortly after, reported that he did not consider the state of the gentleman's health to be such as to prevent his attending.*

**JAMES CHISHOLM McTAVISH**, sworn, and examined by *Mr. Vanfelson*.

*Mr. McTavish.*—I was at Fort William from the month of June in 1816, till the 4th of September in the same year.

*Mr. Vanfelson.*—Was it taken possession of by an armed force, and when?

*Mr. McTavish.*—It was taken on the 13th of August, by an armed force.

*Mr. Vanfelson.*—State how it was taken.

*Solicitor General.*—Surely the time of the Court is not to be taken up by an examination as to how Fort William was taken. What effect can the manner in which it might be taken have upon a charge of accessory before and after a murder?

*Chief Justice Sewell.*—I do not see of what service it can possibly be to shew how Fort William was taken. The fact you have obtained; I should think that quite sufficient.

*Mr. Vanfelson.*—S'il plait à la Cour, mon objet est pour corroborer le témoignage de Crebassa. Mons. Crebassa a juré, qu'en consequence de la prise du Fort William; ils ont envoyé un canot, pour voir si les marchandises et les provisions qu'on étoit accoutumé de recevoir du Fort William, et qu'on attendoit à ce moment, viendroient. Dans mon humble opinion, il'est d'une grande consequence au prisonnier de prouver la manière de la prise du fort, parceque, votre honneur, vous vous rapellerez bien, que d'envoyer ce canot a été représenté, par mes savans confreres, les officiers de la couronne, comme le resultat d'une conspiration contre la vie de Keveny. <sup>(61)</sup>

*Examination resumed by Mr. Vanfelson.*

*Mr. McTavish.*—Fort William was taken forcible possession of on the 13th of August, by the Earl of

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(<sup>61</sup>) If it please the Court, my object is to corroborate the testimony of Mr. Crebassa. Mr. Crebassa has sworn, that in consequence of the capture of Fort William, they dispatched a canoe to see whether the goods and provisions which they were accustomed to receive from Fort William, and which were then expected, were coming. In my humble opinion it is of great consequence to the prisoner to prove the manner in which the fort was captured, because, your honour, you will recollect that the sending of this canoe has been represented by my learned brethren, the officers of the Crown, as the result of a conspiracy against the life of Mr. Keveny.

Selkirk, and was retained in his possession, to my knowledge, till the 4th of September, when I left it. I know that, in consequence of the taking of Fort William, the communication from Montreal to the interior was entirely cut off, and they who had possession of the fort, (that is Lord Selkirk,) prevented any canoes from going into the Indian Territory. At the time of taking the fort, the canoes and goods were all ready to start, if they had been permitted. Their detention was productive of great inconvenience, and might have occasioned the most serious consequences to all who were in the Indian Territory. The clerks and servants of the North West Company were exposed to a state of starvation, owing to the canoes not going, as usual. The canoes usually depart for the interior, from the latter end of June to the early part of August; from about the beginning of July to the 12th August.

*Cross examination conducted by the Attorney General.*

*Mr. McTavish.*—Lord Selkirk stopped the canoes from going into the interior. I applied to him repeatedly, both in writing and personally, for leave to send off the canoes, but he said that he could not permit them to proceed, but I do not recollect that he gave any reason.

*Attorney General.*—Had you heard of the destruction of governor Semple and his people?

*Chief Justice Sewell.*—No, Mr. Attorney General, you must not attempt to put that question; it can have nothing to do with it.

*Attorney General.*—I beg the Court's pardon; I want to refresh this man's memory, that perhaps he may remember that the circumstance of the destruction of governor Semple, was assigned to him as the reason why the canoes were not permitted to proceed. The stoppage of the canoes has been proved.

and is in evidence before the jury ; if we can prove that a reason for stopping them was given, have we not a right to place it before the jury, so that they may judge whether it was not a justification ?

*Chief Justice Sewell.*—We are not trying Lord Selkirk. The prisoner shews the fact that the canoes were stopped, why they were stopped, can be of no consequence to this trial. It can not alter the fact. The reason the prisoner went off in the canoe has been stated to be that, Fort William being taken, they were apprehensive that their supplies might be stopped. They have now gone a step farther, and proved that Fort William was taken, and that the canoes were stopped, and that the supplies did not go up. This is the fact, which can not be varied as to the prisoner, by any reason being assigned for so preventing them going up.

*Attorney General.*—I beg leave to submit, that if it is necessary to the defence to prove that the canoes were stopped, it may perhaps be of equal importance to the Crown to shew that they were properly stopped.

*Mr. Stuart.*—I should like to know what difference it was to make to the prisoner if he was to starve, whether it was because the canoes were rightfully or wrongfully stopped.

*Attorney General.*—I have no desire to waste time in argument. I shall repeat the question, and the Court will dispose of it as they think proper.

Had you heard of the death of governor Semple, and the destruction of his people, and was not that assigned to you as a reason for not permitting the canoes to proceed ?

*Chief Justice Sewell.*—I can not allow it, Mr. Attorney General. Were I to do so, the gentlemen on the other side would wish, and be entitled, to go into their history of this transaction, and where

should we end? and besides all which, it has not the most remote bearing on the case.

*MICHEL MATIN being called, entered the box.*

*The Solicitor General stated that before Marin was sworn, he wished to examine him as to his religious belief, upon which Marin stated himself to be of the Roman Catholic religion, but has not lately taken the communion. Being questioned as to his understanding and knowledge of an oath; he answered—*

*Marin.*—Je suis sermenté pour dire la vérité.

*Chief Justice Sewell.*—Et si vous ne le dites pas, quelle sera la conséquence?

*Marin.*—Que je serai damné. <sup>(62)</sup>

*Chief Justice Sewell.*—Let him be sworn.

*He was accordingly sworn, and examined by Mr. Stuart..*

*Michel Marin.*—Mon nom est Michel Marin. Je suis un natif du pays d'en haut. Je connois le poste de Bas de la Rivière, et j'y étois en 1816. Je connois La Plante. Il m'a demandé dans l'été de 1816, d'aller plus haut avec lui et De Reinhard pour prendre quelqu'un prisonnier, et je suis allé. De Reinhard alloit comme connétable. J'ai été là en canot. Il y avoit deux ou trois lieues de distance de là jusqu'à l'endroit où De Reinhard (Kevény) étoit. Après que nous l'avons pris prisonnier nous sommes retournés directement au fort, où nous sommes arrivés vers cinq heures de l'après midi. Il y a couché, et le lendemain nous sommes partis avec Kevény pour le

<sup>(62)</sup> *M. M.*—I am sworn to tell the truth.

*C. J. S.*—And if you do not tell it, what will the consequence be?

*M. M.*—That I shall be damned.

O

Lac la Pluie. Avant ça Mons. McDonell étoit attendu de Fort William, mais il n'étoit pas arrivé. Il y avoit dans les canots, La Certe, La Plante, Vassall, Vaudrie, et moi, et nous étions dans deux petits canots, parcequ'il n'y avoit pas un grand canot au fort. La Certe nous a dit que les ordres de Mons. M'Lellan étoient d'avoir bien soin de Keveny ; quand nous partîmes du Bas de la Rivière, je n'ai pas vu des fers aux mains dans le canot ; non pas des manchettes. Après avoir quitté Bas de la Rivière, nous en trouvâmes des manchettes au Portage, dans le barge de Keveny. C'étoit à une distance de deux ou trois lieues plus haut. On lui mit ces fers. Nous avons marché quatre ou cinq jours, avant de rencontrer Mons. McDonell. Au Bas de la Rivière nous avons laissé De Reinhard et Mainville. Lorsque nous rencontrâmes Mons. McDonell, il nous fit revirer et retourner, et il donna Keveny en charge à Faye et La Pointe, avec José, pour l'amener au Lac la Pluie. J'ai connoissance que Mons. McDonell lui fit ôter ses fers, et l'a traité amicalement, et dejeuné avec lui, et il lui a donné de sucre blanc et deux bouteilles de rum, à ce que je crois. Mons. McDonnell parloit au Sauvage José, par interprête, en Saulteux. Je le parle moi même. Le Sauvage savoit la route, et il parle Saulteux, et je le parle. Mons. McDonell l'a dit, et je l'ai entendu, "d'avoir bien soin du prisonnier, et lui rendre au Lac la Pluie aussi vite que possible, pour y rencontrer les canots qui monteroient à la Rivière Rouge et retourner les avec." Cadotte étoit l'interprête, et j'ai entendu McDonell donner ces ordres, et je les ai bien compris. Comme Joseph venoit de là, cela lui coutoit d'y retourner, mais Cadotte le persuada consentir. Avant que nous partîmes du Bas de la Rivière, M'Lellan n'avoit pas encore vu McDonell. J'ai entendu toute la conver-

sation entre Cadotte et José, et entre McDonell et Cadotte. Faye et La Pointe furent envoyés avec José et Keveny. Joseph avoit son fusil, comme c'est l'usage et nécessaire en ce pays là, en cas que les vivres manquent. La Certe, La Plante, Vassall, Vaudrie, et moi, étions des engagés. Nous avons reçu des ordres de Mons. McDonell de retourner avec lui ; il nous a dit de retourner avec lui, au Bas de la Rivière, et nous le fimes. Le guide est celui qui conduit la marche et règle le tems du depart et d'embarquement, et José étoit le guide de ce canot. A la Rivière Rouge, nous avons appris que Fort William avoit été pris par les gens du Mi Lord. J'y étois monté avec Mons. McDonell, et en conséquence nous avons descendu au Bas de la Rivière. De là, comme les canots de Fort William avoient manqués terriblement, nous partîmes avec Mons. M'Lellan pour rencontrer les gens des canots qui montoient à la Rivière Rouge, et pour nous assurer s'ils venoient. Desmarais étoit le guide de ce canot, et il y avoit qui partoient avec Mons. M'Lellan, Lorrain, Vasseur, Bonhomme Montour, moi, Mainville, Vassall, et un nommé Rochon. Mons. Archy étoit bourgeois du canot, et avec lui il y avoit Cadotte, Grant, et De Reinhard. Nous nous sommes rendus au Lac la Pluie, et en allant nous trouvâmes José sur la pointe d'un galet dans la rivière Winnipeg. Il n'avoit qu'une chemise pour s'habiller, et il n'avoit de couverture, point de tout. A cette saison, Septembre, il commença faire froid, le matin et le soir. M'Lellan le fit embarquer avec nous. Nous avions pas d'attente de trouver le Sauvage là.

*Mr. Stuart.*—Le Sauvage, qu'est ce qu'il a dit ? <sup>(83)</sup>

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(83) M. M.—My name is Michel Marin. I am a native of the country above. I know the post of Bas de la Riviere, and I was there in 1816. I know La Plante.—In the summer of 1816,



*Solicitor General.*—What the Savage said can not be evidence.

he asked me to go higher up with him and De Reinhard to take some one prisoner, and I went. De Reinhard went as a constable. I went there in a canoe. It was two or three leagues distance from there to the place where De Reinhard (Keveny) was: after we had taken him prisoner, we returned directly to the fort, where we arrived about five o'clock in the afternoon. He slept there, and the next day we went with Keveny to Lake La Pluie. Before that Mr. Macdonell had been expected from Fort William, but he had not arrived. In the canoes there were La Certe, La Plante, Vassal, Vaudrie, and I, and we were in two small canoes, because there was no large canoe at the fort. Lacerte told us that Mr. McLellan's orders were to take great care of Keveny. When we left Bas de la Riviere, I did not see any irons for the hands in the canoe, no handcuffs. After we had left Bas de la Riviere, we found handcuffs at the portage, in Keveny's barge. It was at the distance of two or three leagues higher up. These irons were put on him. We proceeded four or five days before we met Mr. Macdonell. We had left De Reinhard and Mainville at Bas de la Riviere. When we met Mr. Macdonell, he made us tack about and return, and he gave Keveny in charge to Faye and La Pointe with Joseph, to be conducted to Lake La Pluie. I have a knowledge that Mr. Macdonell caused his irons to be taken off, and treated him in a friendly way, and breakfasted with him, and gave him some white sugar, and two bottles of rum, as I believe. Mr. Macdonell talked with the Indian, Joseph, by an interpreter in the Saulteux language. I speak that language my self. The Indian was acquainted with the route, and he speaks Sauteux, and I speak it. Mr. Macdonell told him, and I heard it, "to take great care of the prisoner, and take him to Lake La Pluie as speedily as possible, to meet the canoes which would be going up to Red River, and to return with them." Cadotte was the interpreter, and I heard Mr. Macdonell give these orders, and I understood them very well. As Joseph had come from there, he did not like to return, but Cadotte persuaded him to consent. McLellan had not seen Macdonell before we left Bas de la Riviere. I heard the whole of the conversation between Cadotte and Joseph, and between Macdonell and Cadotte. Faye and La Pointe were sent with Joseph and Keveny. Joseph had his gun as is customary and necessary in that country, in case provisions should fail. Lacerte, La Plante, Vassal, Vaudrie, and I, were engagés. We were ordered by Mr. Macdonell to return with him, he told us to return with him to Bas de la Riviere, and we did so. The guide is he who conducts the march and regulates the times of departure and of embarkation, and Joseph was

*Mr. Stuart.*—It has been admitted to be so all along, and must again be admitted. It has been made evidence for the crown officers when against the prisoner, and must now be against them, when it makes in his favour.

*Solicitor General.*—This is merely parole testimony.

*Mr. Stuart.*—It goes to credibility of witnesses, and we may certainly introduce it.

*Matin.*—On lui demanda pourquoi il étoit en cet état, et il nous l'a dit, mais je n'ai pas entendu sa plainte contre personne. Mons. Archy y étoit. José avoit sa main blessée, et une bosse sur la tête. Je ne puis pas dire les jours exactement, mais peut-être qu'il y avoit trois ou quatre jours après que nous étions partis de la Rivière Rouge, lorsque nous rencontrâmes Joseph. Il lui fit donner quelque chose pour se couvrir, mais je ne me souviens pas ce que c'étoit. Après cela nous avons rencontré Faye et La Pointe sur une isle, à environ une demie lieue. Ils crioient après nous, et nous avons mis à terre. Nos gens ont demandé de Faye et La Pointe, pour

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the guide of that canoe. At Red River we had learnt that Fort William had been taken by the people of the My Lord. I had gone up with Mr. Macdonell, and in consequence of that, we came down to Bas de la Riviere. Thence, as the canoes from Fort William had terribly failed, we departed with Mr. McLellan to go and meet the people, who were going up to Red River, and to ascertain whether they were coming. Desmarais was the guide of this canoe, and there were who went with Mr. McLellan, Lorrain, Vasseur, Bonhomme Montour, me, Mainville, Vassal, and one named Rochon. Mr. Archy was the bourgeois (commander) of the canoe, and there were with him, Cadotte, Grant, and De Reinhard. We proceeded to Lake La Pluie, and on the way we found Joseph on a rocky point on the River Winnipic. He had nothing but a shirt to clothe him, and he had no blanket, not any. At that season, September, it began to be cold, mornings and evenings. McLellan made him embark with us. We had no expectation of finding the Indian there

*Mr. S.*—The Indian, what did he say?

quoi ils étoient là, et où étoit José ; ils repondoient que le Sauvage avoit voulu les tuer, et qu'il s'étoit sauvé dans les bois. Quand Faye et La Pointe voyoient le Sauvage ils se defendoient l'un sur l'autre. Le Sauvage disoit que Faye et La Pointe l'avoient battu, et qu'il se sauva dans les bois. Faye disoit que ce n'étoit pas lui, mais La Pointe qui l'a battu, et La Pointe disoit que c'étoit Faye qui avoit battu Joseph. Mons. M'Lellan a débarqué et les a bien reproché de ce qu'ils avoient battu le Sauvage, et avoient voulu le tuer, et comme Faye et La Pointe rioient de cela, il donnoit des coups de perche à Faye. Nous prîmes Faye et La Pointe avec nous, et la même journée nous rencontrâmes les gens qui alloient à la Rivière des Cygnes, en brigade. Ils étoient cinq ou six canots, et les canots étoient en general de la largeur de cinq hommes. Colishe Ducharme étoit leur guide. Avant cette dernière rencontre, nous demandâmes de Faye et La Pointe, où ils avoient laissé Keveny. Ils nous disoient qu'ils l'avoient laissé sur une isle, mais je ne me souviens qu'ils ont dit combien de jours qu'ils l'avoient laissé. Le Bonhomme Montour, qui est un bois-brulé, a demandé à Ducharme s'il avoit eu de connoissance de Keveny, et il a répondu qu'il l'avoit vu cette journée en haut des Dalles avec les Sauvages. Je n'avois rien entendu, le long de la route, de la part de M'Lellan, ni d'aucune autre personne dans le canot, ni aucunes paroles par rapport à Keveny qui indiquèrent que M'Lellan, ou De Reinhard, ou aucun autre dans le canot, avoient dessein de tuer Keveny, jusqu'au moment que nous rencontrâmes les gens de la Rivière des Cygnes. J'étois la première barre. immédiatement après les bourgeois, depuis le moment que nous avons rencontré José, jusqu'à la rencontre des gens de la Rivière des Cygnes, et après j'étois toujours en avant de Faye

et La Pointe, qui étoient contre le gouvernail. En partant de la brigade, nous suivîmes vers les Dalles, et c'est la route ordinaire pour gagner le Lac la Pluie, (64)

(64) He was asked why he was in that situation, and he told us how it was, but I did not hear his complaint against any one. Mr. Archy was there. Joseph had his hand wounded, and a lump upon his head. I can not say how many days exactly, but perhaps it was two or three days after we had left Red River that we met Joseph. Something was given him to cover himself with, but I do not recollect what it was. After that, we found Faye and La Pointe upon an island, about half a league off. They called to us, and we put ashore. Our people enquired of Faye and La Pointe why they were there, and where Joseph was; they replied that the Indian wanted to kill them, and that he had run away into the woods. When Faye and La Pointe saw the Indian, they laid the blame on each other. The Indian said that Faye and La Pointe had beat him, and that he fled into the woods. Faye said that it was not him but La Pointe who had beat him, and La Pointe said that it was Faye who had beat Joseph. Mr. McLellan landed, and reproached them much for having beat the Indian, and wanting to kill him, and as Faye and La Pointe laughed at that, he gave Faye blows with a canoe-perch. We took Faye and La Pointe with us, and the same day, we met the people who were going to Swan River, in brigade. There were five or six canoes, and the canoes were generally of the size of five men. Colishe Ducharme was their guide. Before meeting these last, we had asked Faye and La Pointe where they had left Keveny. They told us that they had left him upon an island, but I do not remember that they said how many days it was since they had left him. Bonhomme Montour, who is a half-breed, asked Ducharme whether he knew any thing of Keveny, and he answered that he had seen him that day above the Dalles with the Indians. I had heard nothing on the way, on the part of McLellan or of any other person in the canoe, nor any words relative to Keveny, which could indicate that McLellan, or De Reinhard, or any other in the canoe, had any design of killing Keveny, until the time when we met the people of Swan River. I was on the first bar immediately behind the bourgeois, from the moment that we had met with Joseph, until the meeting with the Swan River people, and afterwards I was all the time before Faye and La Pointe, who were next the steersman. On parting from the brigade, we pursued our way towards the Dalles, and that is the usual route for going to Lake La Pluie.

*Mr. Stuart.*—Perhaps, gentlemen of the jury, you would wish to have a map before you. *One was accordingly handed to them.*

*Matin.*—Nous avons trouvé Faye et La Pointe au matin, et la même journée que nous avons rencontré les gens de la Rivière des Cygnes. Nous l'avons trouvé en haut des Dalles avec les Sauvages. Pendant tout ce tems, après avoir laissé les gens de la Rivière des Cygnes, je n'ai pas entendu parler dans le canot, par qui que ce soit, de tuer Keveny, ni de Keveny point de tout. Je n'ai rien entendu de Vasseur, ni d'aucun autre, qu'il auroit les bottes de Keveny, ni son chapeau. <sup>(55)</sup>

*Mr. Stuart.*—There is now only the intermediate time, namely while they were in company with the brigade, to cover. Ecoutez Matin ! Pendant le tems que vous étiez avec la brigade de la Rivière des Cygnes, avez vous entendu aucune parole de Keveny ?

*Matin.*—Non je n'ai pas. Je n'ai entendu aucune parole de cette sorte.

*Mr. Stuart.*—S'il avoit été dit, auriez vous l'entendu ? ou quelque chose de semblable ?

*Matin.*—Si quelque chose de semblable eut été dit, je l'aurois certainement entendu. Nous étions quinze dans le canot avec le baggage. <sup>(56)</sup>

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<sup>(55)</sup> We found Faye and La Pointe in the morning, and on the same day that we met with the people of Swan River. We found him above the Dalles with the Indians. During the whole of this time, after we had parted from the people of Swan River, I did not hear speak in the canoe, by any one whomsoever, of killing Keveny, nor of Keveny at all. I heard nothing said by Vasseur, nor by any one else, that he would have Keveny's boots, or his hat.

<sup>(56)</sup> Mr. S.—Listen Matin ! During the time that you were with the Swan River brigade, did you hear any word about killing Keveny ?

M. M.—No, I did not. I did not hear any word of the kind.

Mr. S.—If it had been said, would you have heard it ? or any thing similar ?

*Mr. Stuart.*—There is another question I have omitted. Vasseur où nageoit-t-il ? en quelle partie du canot ? avec les bourgeois ?

*Matin.*—Vasseur nageoit au devant des bourgeois. Il ne nageoit pas dans la barre des bourgeois, et je n'ai jamais vu aucun engagé nager dans la barre des bourgeois. Ayant quinze hommes dans le canot de Mons. McLellan, c'étoit impossible d'embarquer Keveny et son butin. Il y avoit là un petit canot. On employa les Sauvages pour le gommer ; nous partîmes, et De Reinhard, Mainville, et José, restoient là pour attendre que le petit canot fut prêt, et pour amener Keveny dans ce canot. C'est à l'ordinaire qu'on laisse quelque personne qui sache le chemin, comme un guide, et José avoit été laissé comme un guide. Nous autres bois brulés étions de la Rivière Rouge, et ne connoissions pas cette route. Desmarais connoissoit le chemin, mais il étoit le guide du canot de Mons. McLellan. Excepté Faye et La Pointe, qui avoient déjà abandonné Keveny, il n'y avoit des Canadiens que Rochon dans notre canot ; tous les autres étoient des bois brulés. Le soleil pouvoit avoir une demie heure, ou une heure, de haut, lorsque nous campâmes pour la nuit. Au camp les bourgeois avoient une tente et les engagés un feu. Il y avoit un feu cette nuit devant la porte de la tente de Mons. McLellan. Après j'ai vu le petit canot arriver. J'étois alors sur la grève, M<sup>r</sup> Lellan n'étoit pas là, mais je ne sais pas s'il étoit dans sa tente, ni où il étoit. De là nous partîmes le lendemain sur notre route pour le Lac la Pluie, et nous fûmes trois ou quatre jours à nous y rendre. J'ai toujours continué à nager dans

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M. M.—If any thing similar had been said, I should certainly have heard it. There were fifteen of us in the canoe with the baggage.

là même place. Je n'ai aucune connoissance que McLellan a montré un papier à De Reinhard, et lui a dit, ou a dit aux autres, que c'étoit bon que Keveny avoit été tué, parcequ'il avoit le pouvoir d'avoir des troupes du Roi pour prendre nos terres sur la Rivière Rouge. McLellan vouloit aller plus loin rencontrer les gens, mais nous ne voulions pas, la saison étoit trop avancée. Nous restâmes deux jours au Lac La Pluie, et donc Mons. McLellan s'est retourné avec les autres au Bas de la Rivière, excepté De Reinhard, Faye, et La Pointe, qui restoient au Lac la Pluie. Les armes appartenans à De Reinhard, savoir, un sabre et une carabine, furent apportés du Lac la Pluie au Bas de la Rivière dans notre canot. Je n'ai entendu aucun cri ~~de~~ joie quand nous avons rencontré les gens de la Rivière des Cygnes, et qu'ils nous ont dit qu'ils avoient vu Keveny. Je connois Mons. Heurter. J'ai vu à la Rivière aux Souris, deux jours de marche au de là du Fort Douglas, la valise de De Reinhard. (67)

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(67) Vasseur paddled before the bourgeois. He did not paddle in the bar of the bourgeois, and I never saw any engagé paddling in the bar of the bourgeois. Having fifteen men in Mr. McLellan's canoe, it was impossible to embark Keveny and his baggage. There was a small canoe there. The Indians were employed to gum it. We departed, and De Reinhard, Mainville, and Joseph remained behind to wait till the small canoe was ready, and to convey Keveny in that canoe. It is usual to leave a person who knows the way, as guide, and Joseph was left there as guide. We half-breeds were from Red River, and were not acquainted with that route. Desmarais knew the way, but he was guide to Mr. McLellan's canoe. Save Faye and La Pointe, who had already abandoned Keveny, there was no Canadian in our canoe but Rochon; all the others were half-breeds. The sun might be half an hour, or an hour, from setting, when we encamped for the night. There was a fire that night before the entrance of Mr. McLellan's tent. Afterwards I saw the small canoe arrive. I was then on the beach. Mr. McLellan was not there, but I do not know whether he was in his tent, nor where he was. We set off from there the next day on our way to Lake La Pluie, and we were three or four days in getting there. I always con-

*Cross examination conducted by the Solicitor General.*

*Matin.*—On parloit dans le canot. Je ne puis pas dire que j'ai tout entendu ce que s'est dit dans le canot. Pendant tout ce voyage je n'ai jamais entendu le nom de Keveny dans le canot. J'ai entendu une fois un bruit de la mort de Keveny, mais ni avant cela, ni après, ai je jamais entendu le nom de Keveny. J'étois présent au tems que De Reinhard et Mainville l'ont pris prisonnier. Keveny entra dans sa tente, et en sortit avec un fusil bandé, et vouloit tirer sur De Reinhard. Je le saisis, et lui ôtois son fusil, que j'ai debandé moi même. Il y avoit beaucoup de resistance, mais ils parloient Anglois, et je n'ai pas compris ce qu'ils ont dit. Je n'ai pas entendu des ordres de faire brûler le canot. C'étoit Desmarais qui commandoit le canot, et c'est le guide ordinairement qui commande. Je ne puis pas dire pourquoi le canot étoit brûlé, mais il y avoit du sang dessus, et je l'ai vu. Vasseur a dit, "il faut que j'aille mettre le feu à ce canot." Il n'a pas brûlé. Si Mons. Archy a parlé de la mort de Keveny, je ne l'ai pas entendu. Il parlois bien en peine de sa mort par sa contenance. Je ne l'ai

tinued to paddle in the same place. I have no knowledge that McLellan shewed a paper to De Reinhard, and said to him, or said to the others, that it was well that Keveny had been killed, because he had the power of getting King's troops to take away our lands from us at Red River. McLellan wanted to go farther, in order to meet the people, but we would not; the season was too far advanced. We remained two days at Lake La Pluie, and Mr. McLellan then returned with the others to Bas de la Riviere, excepting De Reinhard, Faye, and La Pointe, who remained at Lake La Pluie. The arms belonging to De Reinhard, namely a sword, and a carbine, were brought from Lake La Pluie to Bas de la Riviere in our canoe. I did not hear any cry of joy when we met the people of Swan River, and that they told us they had seen Keveny. I knew Mr. Heurter. I saw De Reinhard's trunk at Riviere aux Souris, which is two days march beyond Fort Douglas.



rien entendu dire de sa mort, mais il ne jasoit pas avec De Reinhard, et j'ai bien vu qu'il ne le regardoit pas comme auparavant, et il n'avoit pas le même air. Je ne suis pas connu par aucun autre nom dans les territoires Sauvages que Michel Matin. <sup>(68)</sup>

*The Court adjourned for half an hour to allow the Jury to take refreshment.*

MONDAY AFTERNOON.

*The Jury being called over, and all present.*

Colonel ALEXANDER FRASER, sworn, and examined by Mr. Vanfelson.

Col. Fraser.—I know the prisoner at the bar, and have done so for upwards of twenty years. I knew him when he was a boy. He was always reputed to be a very honest, humane, and worthy man.

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(68) There was talking in the canoe. I can not say that I heard all that was said in the canoe. During the time this voyage lasted, I did not hear the name of Keveny mentioned in the canoe. I once heard a rumour of the death of Keveny, but neither before that, nor after it, did I ever hear the name of Keveny mentioned. I was present at the time when De Reinhard and Mainville took him prisoner. Keveny went into his tent and came out with a cocked gun, and was going to fire at De Reinhard. I seized him, and took his gun away, which I uncocked myself. There was a good deal of resistance, but they spoke English, and I did not understand what they said. I did not hear any orders given to burn the canoe. It was Desmarnis who commanded the canoe, and it is generally the guide who commands. I can not say why the canoe was burnt; but there was blood upon it, and I saw it. Vasseur said, "I must go and set fire to that canoe." It did not burn.—If Mr. Archy spoke of Keveny's death, I did not hear him. He appeared by his countenance to be much concerned on account of his death. I heard nothing said about his death, but he did not converse with De Reinhard, and I saw very well that he did not look upon him in the same light as before, and he had not the same manner. I am not known in the Indian Territory by any other name than that of Michel Matin.

*The Hon. WILLIAM BACHELOR COLTMAN,  
sworn, and examined by Mr. Stuart.*

*Mr. Coltman.*—I am, one of the commissioners for the Indian Territory, appointed, as I understood, by His Royal Highness the Prince Regent, and in consequence it became my duty to proceed to the Indian Country. I left this in 1817, on the 5th of May, and arrived at Red River about the 5th or 6th of July; about that time, I can not say exactly, as I have no note of it. Some of the servants of the Hudson's Bay Company thought themselves entitled to act as magistrates generally, but I believe they declined acting whilst I was there, under a kind of protest. There was no magistracy appointed in the Indian Territory by this government, under the Statute of 43rd Geo. III, Cap 138, except Mr. Fletcher and myself. There were no constables except special ones, no Courts of justice, nor any gaols, recognised by law. I know the prisoner at the bar. I saw him at Fort Douglas, on Red River, two or three days after my arrival. He was in confinement at the time I arrived, and I saw him a day or two after; it was, I think, on the second day after my arrival at Red River. I thought it my duty to see him in his place of confinement, to ascertain that he was not treated with any unnecessary degree of harshness. I wish to add that I also saw him on the following day, for the purpose of receiving a declaration which he stated he wished to make to me; that was on the 9th of July.

*Mr. Stuart.*—Have you that declaration, Sir?

*Mr. Coltman.*—No, I have not. I had it till it was fyled with other papers with the Attorney General.

*Mr. Stuart.*—Was it an examination taken by you as a magistrate?

*Mr. Coltman.*—It was not exactly an examination, it was a voluntary declaration on the part of Mr. M'Lellan.

*Chief Justice Sewell.*—Have you got it, Mr. Attorney General?

*Attorney General.*—Yes, I have got it, but it is not evidence, and therefore there is no necessity to produce it. His own declaration can go for nothing.

*Chief Justice Sewell.*—*Prima facie*, it certainly is not evidence. It might, however, if read, save a great deal of time and trouble, but exercise your own pleasure.

*Attorney General.*—I do not consent to its being read.

*Mr. Stuart.*—We certainly shall not press it, if objected to. But we thought it would be the best evidence that we had demanded of the commissioner now in the box, the fullest investigation of our conduct, as well as of the information which we had given to him, and of our wish that the persons capable of giving evidence should be secured.

*Attorney General.*—My learned friend mistakes, it is no evidence at all, nor can it be made so. It is merely a prisoner's own declaration, which is never admitted to go to the jury.

*Chief Justice Sewell.*—M'Lellan might have taken a copy of it, and have read it in his defence, and it would then have been before the jury, which is all that is now wished.

*Mr. Stuart.*—A most important fact we have obtained from Mr. Coltman's evidence. That as soon as he arrived at Red River, where Mr. M'Lellan was, he went to him to receive a declaration which he had expressed a desire to make. This is a case of a very peculiar nature, and although we are well aware that there are technical objections to this pa-

per being received in evidence, yet, as they are merely technical, we certainly did not expect that the Crown officers would object to the reading, when certainly the substantial justice of the case would be promoted thereby.

*Chief Justice Sewell.*—You have, as a fact, that at a certain given day, Mr. Coltman received from the prisoner his declaration relative to the subject of his confinement: perhaps the Crown officers will have no objection that the part relative to securing the persons who might be evidences upon the subject should be read.

*Mr. Stuart.*—We wish the entire paper read; if any part is to be withheld, we would prefer that none should be read.

*Attorney General.*—Then we do not consent to any part of it being read.

*Examination resumed by Mr. Stuart.*

*Mr. Coltman.*—It was not an examination of Mr. M'Lellan which I took; he had been examined before. It was a declaration which he stated he wished to make, and I received it.

*Mr. Stuart.*—I would just ask the Crown officers whether they still refuse to produce this declaration. Its production would save considerable time, and there can be no objection but a technical one.

*Solicitor General.*—In refusing to produce, or allow this declaration to be exhibited as evidence, I beg to say it is not a technical, but a substantial, objection that we have, namely, that it is not, nor can it legally be made, evidence. The prisoner can make a similar statement in his defence, if he thinks it advisable.

*Attorney General.*—Another objection that we have, is that to allow it to be read, would be to disclose the King's evidence.

*Mr. Stuart.*—I beg my learned friend's pardon, but it would not be to disclose the King's evidence, it would be merely to shew that M'Lellan was anxious to give every information in his power relative to the occurrence, and to have every person secured that was likely to give any information on the subject. But I will proceed with my examination, and shew these circumstances by the Hon. Commissioner by whom the declaration, which the Crown refuses, was received.

*Examination resumed by Mr. Stuart.*

*Mr. Coltman.*—I saw Mr. M'Lellan, at his own request, on the 9th day of July, at Red River.

*Mr. Stuart.*—Did he give you the names of the persons who were with him in a canoe at the time the supposed murder was committed?

*Solicitor General.*—We have no wish to exclude testimony which can be received, but does your Honour think that a question which can be put? I do not intend to argue upon it, but it strikes me as being completely inadmissible.

*Chief Justice Sewell.*—What is asked of Mr. Coltman is merely the account given to him by Mr. M'Lellan in July 1817, and to prove that it was accompanied by a wish that the necessary evidences for his trial might be secured. This certainly he may obtain from Mr. Coltman in evidence, and it will be for the jury to give it what weight they think proper.

*Examination resumed by Mr. Stuart.*

*Mr. Coltman.*—He stated that there were with him in his canoe at the time the murder of Keveny was supposed to have been committed; one Cuthbert Grant, one Joseph Cadotte, Jean Baptiste Desmarais, Augustus Rochon, Hubert Faye, one La

Pointe, Joseph Lorrain fils, Michel Matin, one Vasseur, one Vaudrie, and Vassall. He also stated, that the last time he saw Keveny he was with several Indians, and in company of three other persons. The three were Charles De Reinhard, who had before executed a warrant granted by Archd. Norman McLeod against him, Mainville a half-breed, and a Savage named José, Fils de Perdrix Blanche. He requested that all these persons might be secured, and sent to Montreal to give evidence on his trial. I recollect that I stated that the expense would be very great, and I objected to it on that account. He said in a case like this, expense ought not to be minded. I did not take it on paper, but I recollect it distinctly; they were words to that effect which were made use of.

*Mr. Stuart.*—Did you, Sir, take any measures, or were any measures taken, in consequence?

*Mr. Coltman.*—I was embarrassed, and, after consideration, determined that it would be right, as he was indicted, to make known the prisoner's wish to his friends, and I have every reason to believe steps were taken in consequence, indeed I know some were taken by them. It did not appear to me that I had any legal authority to incur so heavy an expense, or even to compel them to come and attend the trial. By compelling them to attend, I mean I had no authority to secure their attendance by taking them into custody. I would wish to add, however, that I did, at the expense of government, bring Fils de la Perdrix Blanche to Montreal. He only spoke Indian, and I not speaking it at all, I had very little communication with him, but he certainly came down under the impression of appearing as a witness, but whether for the Crown or on the defence, was not explained to him. He was at this time at large, and at a distance, and I conceived

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that there was no other way of procuring his attendance, but in this manner as a witness, and I thought it material to have him, in some shape or other, as a testimony on this affair.

*Mr. Stuart.*—Were measures taken to furnish him with religious instruction, so as to qualify him to become a witness?

*Mr. Coltman.*—Measures were taken to instruct his mind on religious topics, particularly as to the nature of an oath. I could have wished they had begun earlier, and that they had continued for a longer period, but measures were taken. It was ultimately understood, at least during a certain time, that the individual was to be received as a King's evidence, by me at least it was; indeed I may say it was so understood.

*Mr. Stuart.*—I beg leave to state our object. It is to prove that this individual was first received as a King's evidence, and was then indicted. I would ask Mr. Coltman whether he was received as King's evidence by the King's lawyers as well as the King's commissioners?

*Mr. Coltman.*—He came down undoubtedly at the expense of the government, under the impression that he was to be a witness, but he did not know for whom. My own opinion was that he ought to be a witness for the Crown. I communicated that opinion to the King's Crown officers at the time, to the Advocate General, now Mr. Justice Pike, and to the Attorney General, and I had letters from them which certainly led me to consider that he was accepted as a King's evidence. I accordingly communicated the circumstance to M<sup>r</sup>. Lellan's friends. When he was brought down to Montreal, he was placed in charge of an officer of the Indian department, an interpreter of the Crown,

and received instructions from a priest belonging to the seminary.

*Mr. Stuart.*—I beg to enquire if the Crown officers will now admit the declaration of M'Lellan to be read to the jury.

*Attorney General.*—We do not see that it ought to be.

*Mr. Stuart.*—The situation of the prisoner was, and still continues to be, a very peculiar one, and in addressing myself to the Court, I hope not to go beyond, but I shall strive to reach, the bounds of professional duty, and those to their utmost extent. Fort William was taken possession of, and the partners of the North West Company were taken prisoners, and held out, not only in this Indian country, but elsewhere, as rebels, and persons guilty of the highest crimes and misdemeanours. A system of proscription was adopted against all who differed with the stronger party. A system of intrigue, which perhaps is still carried on, that those who sit in the same room, eat at the same table, drink of the same cup, should be made the instruments of mutual suspicion and jealousy. When every man was apprehensive lest his fellow should become his accuser. Such a system as this was calculated to excite alarm any where, but much more in this remote and destitute country; destitute of all those safeguards, which the law and its correct administration affords to us. Well might this system of proscription excite alarm in a country where the Earl of Selkirk was the only magistrate. I am not beyond the facts, when I say, this only magistrate was the great and only accuser, and that his intention, and perhaps his only intention, was to destroy this commercial company, who were his great rivals. A witness falls into his hands, if he does not answer his purpose, he is changed from a witness to a pris-



oner, and indicted. Look on the other hand at Faye, La Pointe, and Heurter, where, *prima facie*, more culpability attaches, they, instead of being indicted, are made witnesses.

*Solicitor General.*—I object to my learned friend's course, because his observations are a series of accusations not founded on fact.

*Mr. Stuart.*—These round assertions of the Solicitor General; I beg to say, are not by any means decorous, nor such as are usual in this Court.

*Solicitor General.*—Then I must say Mr. Stuart is not correct in throwing imputations upon witnesses, which are not justified by any thing that has appeared in evidence.

*Chief Justice Sewell.*—You know, gentlemen, with how much pleasure I always hear you upon any subject which you think proper to address the Court upon, but we can not permit this sort of replication to go on. When by any means you get beyond the coolness of argument, it is our duty to interfere, as well as when you exceed the limits of legal argument. I would, Mr. Stuart, ask you to point out how, by possibility, the course you have adopted, is to effect any thing in favour of your client, and, on the other hand, we must remark that the more eligible mode of arresting any irregularity in argument is to apply to the Court.

*Solicitor General.*—In stating that my learned friend was incorrect in his representations, I had no design to say that it was intentionally done on his part, far from it, but that his statements were totally unsupported by evidence, and that, if investigated, I believed the reverse would be found to be the case.

*Chief Justice Sewell.*—Thank God, our bar is not in that state that we need be fearful of any misunderstanding. Let the cause go on.

*Mr. Stuart.*—I shall state as summarily as I can, and in a way as little calculated to offend as I am able, the unfortunate situation of this prisoner, and of every other person in that country, whose views and objects were opposed to those of the private prosecutor in this case. First, let it be remembered that in this unfortunate country there was no established magistracy. That there was only the Earl of Selkirk acting there as a magistrate. The talents of the noble Earl are well known, whilst his elevated rank entitles him to our respect. The differences between the two Companies, to which the noble Earl and the prisoner severally belong, are well known, and, without again enumerating the various acts of aggression which have marked the contest, it is sufficient to say that it belonged, from the peculiar situation of affairs, to the Earl of Selkirk, to the private prosecutor, to say whether an individual was to appear in Court as a witness, or as a prisoner. Take the instance of the Indian José. After the faith of the government was plighted that he was to be a witness on the part of the Crown, after the communication of this circumstance has been made to the prisoner and his friends, from the most respectable source, who has testified to the fact, suddenly the Savage is to be indicted, and we are to be deprived of his testimony. I do not intend to get out of the abstract question, but let us now, for a moment, turn to the conduct of the prisoner. He calls upon the Hon. Commissioner as soon as he arrives, and requests, (after giving him a full account of all he knows of the transaction,) that all the persons capable of being witnesses may be sent down. Under this request three persons were eventually sent down. It was thought so important, that the measure was adopted. The prisoner, thus easy as to the result, knowing that these persons

are to be witnesses upon the part of the Crown, waits patiently till his prosecutors put him on his trial, when, suddenly, he finds himself deprived of their testimony, by their being indicted as participators in the same offence. I intend to go one step farther. Perdrix Blanche was actually received as an evidence for the Crown by its officers, and, under their directions, received instructions of a religious nature, to qualify him to give evidence, yet, when upon subsequent examination his evidence is not found to be of sufficient importance to render it worth while to retain him as an evidence for the Crown, then he is immediately to be indicted, and we are to be deprived of his testimony. Desmarais is just the same case. He is brought down as a witness, but before the trial, is included in the same indictment, but in a different degree. The hardship of the situation in which the defendant, and any other person opposed to the views of certain persons, stand, consists in this, that, from the peculiar situation of the private prosecutor, whom he will he puts into the indictment, and brings into court as a prisoner, and whom he will he puts into the subpoena, and brings him forward as a witness. By this means, having the two strongest passions of the human mind, hope and fear, at his command, it is easy to conceive what must be the effect of such an influence. Not to mention any names, but what, I would ask, distinguish the cases of three of the principal witnesses on the part of the Crown from Grant or Cadotte? Three are brought to the witness box to testify, whilst the two are to be arraigned and tried at the bar. I can not but advert to the peculiarity of the situation in which the private prosecutor and those of the other Company stand towards each other. I do not accuse the noble Earl of partiality, but perhaps it is not going too far to say,

that, so situated, it would be scarcely possible for any man so entirely to divest himself of personal feeling, as not to be influenced, in some degree, by it. Looking at the scenes that have been presented to our view, and presumption might lead us to imagine we discovered, in the events of the Indian Territory, the force of this principle. The vigilance of my learned friends could not extend to Red River, they must necessarily be dependent on the assistance and representations of the magistracy, and looking at what, or rather who, is that magistracy, contemplating the deep interest and heavy stake he has in the events that take place there, I say the presumptive idea is, though, no doubt, the magistrate is innocent, yet the presumption will present itself that, surrounded as our natures are by frailty, and exposed as our judgments are to influences often so secret and subtle as almost to defy detection, personal feeling may have had some share in the course of procedure that has been adopted. To finish my observations, which have extended themselves to a much greater length than I intended, I would remark that I did think, having been deprived of all the witnesses on whom we had a right to calculate, the officers of the Crown would not have objected to the declaration of the defendant being read. José, on whom we confidently relied as a witness on the part of the Crown, is indicted; Desmarais is indicted; Grant and Cadotte are indicted; and thus, deprived of our primary, we are compelled to resort to secondary, testimony.

*Chief Justice Sewell.*—You have got one point relative to José established, namely, that he was sent to receive instruction as to the nature of an oath, and that, up to that time, he was intended to be used as a witness. You therefore only require to prove the second, namely that he was indicted.

*Attorney General.*—It is a little singular, I think, to attempt to prove by the commissioner what was done in his absence. As to this history of culling witnesses, I do not know to what my learned friend refers. He appears to speak as if witnesses had been taken on, and then hunted off, to all insinuations of that kind I am completely indifferent. The commissioner undoubtedly acted with great caution, but the Crown never pledged itself to make José a witness.

*Chief Justice Sewell.*—There was a little unnecessary heat on this occasion which I was sorry to observe, because, I am happy to say, it is what we are strangers to. Mr. Stuart's position was this: the persons whom we intended, and also those whom we had reason to believe the Crown proposed, to produce as witnesses, have been indicted, and we are thereby deprived of our primary, and therefore ought to be allowed to introduce secondary, testimony. The Crown officers may be assured that I feel it my duty, my bounden duty, to protect them if attacked, and it is my pleasure to do so whenever they are; but the object of the defence was merely to shew why they could not produce, what is called, the best evidence. Here are five persons, say they, indicted for being present at the supposed murder. Perhaps I am not right in my conjecture, but the jury might insist upon their being indicted, a thousand reasons might be assigned without attaching blame to the Crown officers. The only necessary question is this; was Perdrix Blanche indicted afterwards?

*Examination resumed by Mr. Stuart.*

*Mr. Coltman.*—Perdrix Blanche was, as I believe, subsequently indicted. I saw Desmarais at Lac la

Pluie, in going to Red River, about the 24th of June. When I first saw him I understood he was guide to a canoe of goods belonging to the Earl of Selkirk. He was produced to me as a witness, and I think, as positively as I can remember, speaking only from memory, that he was brought to me by an agent of Lord Selkirk's; one Michel McDonell, and this same Desmarais has no doubt been since indicted for the same offence. I took no step myself to bring down Rochon. I represented the prisoner's wishes to have every body brought down, but Rochon was not brought down.

*Cross examination conducted by the Attorney General.*

*Mr. Coltman.*—I do not know why Rochon was not brought down, I heard many reasons assigned, but I am not sufficiently acquainted with their truth to assert they were correct. I believe that at this time he is in the Indian Territory, within the process of this Court. At the time it was thought expedient to take Fils de la Perdrix Blanche as a Crown witness, it was not known what Perdrix Blanche could prove. Indeed it could not be known, as he was unacquainted with the nature of an oath till he was instructed therein. I did not feel myself warranted in promising him that he was to be a witness, without the sanction of the Crown officers. At that time he was with the witness for the defence. I afterwards received a letter from the Attorney General wishing to have him, as I supposed, for a King's evidence. I accordingly applied to the gentlemen of the North West Company, and they produced him. I applied to them so that he might be instructed in the nature of an oath, as he came down to be a witness either on the part of the crown or for the defence. I had never in words, but I think I had by actions, expressed to

you that he ought to be returned to the North West Company, from whom I had received him under an idea that he was to be a witness. He was indicted afterwards, but I understood that, by order of the Attorney General, notice had been previously given to him, that he could not be received as a witness for the Crown.

*Mr. Stuart.*—This is our defence.

*Attorney-General.*—As Des Loges' character has been somewhat attacked by Ducharme's and other testimony, I wish to examine one or two witnesses in support of it.

**LOUIS NOLIN**, *sworn, and examined by the Attorney General.*

*Nolin.*—Je connois Augustin Poirier dit Des Loges depuis trois ans. Il s'est assez bien comporté. Je ne puis pas dire qu'il parle toujours la vérité. Je ne le connois pas assez bien pour dire s'il est croyable, et digne de confiance, mais je ne l'ai jamais attrappé dans un mensonge. <sup>(69)</sup>

**MILES McDONELL**, *Esquire, sworn and examined by the Attorney General.*

*Mr. McDonell.*—I know Augustin Des Loges; Poirier dit Des Loges. He went with me to Hudson's Bay from Jack River and back again to Red River. I do not know his general character in the Indian Territory. I do not know enough of him to speak to it, but I know nothing against him. This voyage was four years ago, it took nine weeks, and since that time he has been with me about two

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(69) I know Augustin Poirier dit Des Loges since three years. He conducted himself pretty well. I can not say that he always speaks the truth. I do not know enough of him to say whether he is worthy of belief, or that confidence can be placed in him, but I never caught him in a lie.

months at Red River. That was the last year. I can not say that ever I heard his character from the North West Company, I know no reason for not believing him upon his oath.

*Cross examination conducted by Mr. Stuart.*

*Mr. McDonell.*—I have no further knowledge of him than what I state. He was a boatman, and of course, from our different stations in life, no familiarity existed between us. I never heard any thing to lead me to think him unworthy of credit upon his oath.

*Attorney General.*—This poor man is at a great distance from where he is known, and no persons are here who can speak particularly to his character. We have finished.

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## CHARGE TO THE JURY,

### BY THE CHIEF JUSTICE.

GENTLEMEN OF THE JURY!

WE have, at length, arrived at that point of this important enquiry, when the whole matter is about to be submitted to your solemn and ultimate decision, and in handing it over to that decision, it is the duty of the Court to endeavour to eclaircise those parts of the subject which may appear to them to require it, but in so doing it is not their intention, because it is not their right, any more than their duty, to suggest any opinion on the facts of the case ; that, gentlemen, is exclusively your part,



and being so, the Court do not think it right to say any thing to you in their charge which could be considered as indicating an opinion on the facts of the case. The only and sole object of the Court in addressing you will be to place the subject, with reference to the crown and the prisoner, in all its bearings before you, exhibiting those particular points of the case which appear to militate against him, and equally so those which, as they militate against the crown, must consequently make for the prisoner, and thus assist you to form, but not to guide, your judgment. But, gentlemen, with respect to the law that may arise on any of these points, as the facts are exclusively your's, so the law is exclusively our's; and as we are bound to give deference to your judgment on them, so the constitution ordains that we are entitled to similar consideration from you as to points of law, and, gentlemen, it is this happy union of the respective duties assigned to each that renders the system of jurisprudence which we are this moment administering the first in the world.—The accusation against the prisoner is contained in the last count of an indictment consisting of eight, but as far as the present defendant is concerned, it is the eighth alone by which he is to be affected, for if he is by your verdict to be convicted, it must be on the eighth, for, as the facts have appeared on the part of the Crown, it is only to that count that they apply. This count charges a man, named Mainville, with having killed Owen Keveny, with a gun loaded with powder and ball, thereby constituting him the principal in the first degree. De Reinhard is charged as a principal, in the second degree, in being present at the time, that is to say, that though he did not kill him, yet he is as guilty as him whose hand actually perpetrated the crime, because he was there. It is there-

fore of no consequence to enquire whether it was by Mainville's hand, or not, that the man was killed, because De Reinhard has been convicted, and the record of his conviction has been produced and made a piece of evidence against the prisoner M'Lellan. The charge against him and others, but with whom, however, you have nothing to do, is that he was an accessory before and after the fact. The principles upon which these distinctions of degree in the same crime proceed will appear, if I state a case, to be briefly and distinctly this, and I think you will immediately perceive its force. Three persons determined among themselves that they will commit a murder, the whole three having thus preconcerted the commission of the crime, two of them go to carry it into effect, and one, by accident or design, remains behind; of the two that thus go, one only actually perpetrates the crime; he, gentlemen, becomes the principal in the first degree, by having with his own hand committed the murder. The one who accompanied the murderer, as he was with him, aiding and assisting, or was ready to do so, if necessary, forms a criminal in the second degree; whilst the third, who has joined in preconcerting the murder, but afterwards stays behind, or by some accident was not present, or did not go, he is the person guilty of the crime in being an accessory before the fact. I think, gentlemen, after this exposition, the principle must be so apparent, that you can have no difficulty whatever in its application. Having thus exhibited the principle, for a moment apply it to this case. I mean, gentlemen, only hypothetically. Mainville actually did it, he killed the man, and De Reinhard was present at the time. Previously, in company with Mainville and De Reinhard, the prisoner M'Lellan had advised, counselled, commanded, or even consented to

the murder. The application is obvious, Mainville is the principal in the first degree, De Reinhard in the second, and M'Lellan would be the accessory before the fact. But, gentlemen, let me beg you not to mistake, and imagine by what is meant merely as an hypothetical elucidation of the case I had just before put, I charge the prisoner of partaking in the least, or smallest degree, in the justness of the application, for I should be most unwarrantably intrenching on your province, I am only endeavouring to explain to you, in the clearest manner possible, the principle as laid down in the books, and to which I shall presently have occasion to refer you as authorities, that, in exercising your peculiar right of deciding on the guilt or innocence of the accused, you may satisfactorily comprehend the law upon which the application to the prisoner is to be made. Now, gentlemen, we will examine what is necessary to constitute the crime of being an accessory after the fact, for not only is that man guilty who advises, counsels, commands, or even consents, to a murder, though he does not commit, nor assist, nor even be present, at it, but also he that afterwards comes to a knowledge that a murder has been committed, and who, with that knowledge, not only neglects to declare it to a magistrate, but goes farther, and aids the murderer to escape the justice of the violated law, he is, gentlemen, also an accessory, but as the former was in law considered an accessory before, so the latter is considered an accessory after, the fact. It is not a mere omission to perform a duty, it is not a negligence to give information to a magistrate, so that the hue and cry can be raised after the murderer, that will support a charge of accessory after the fact, for such conduct, though reprehensible in the highest degree, amounts only to misprision of felony, an offence most un-

doubtedly of a very high description, but not the aggravated one charged in this indictment. He who is guilty of merely concealing a felony is guilty of a misdemeanor, which is punishable by fine and imprisonment; and the offence is a misprision of felony, but if this is carried any farther than a culpable remissness of duty, then the offender becomes an accessory after the fact; that this is a correct exposition of the law, gentlemen, I shall produce to you some of the best authors, and you will in a moment see that I have stated it correctly. A very learned and able criminal jurist, Mr. Justice Forster, says, page 125: in considering the statutes upon which the doctrine of accessory before and after the fact are founded. "The statutes are the 4th and 5th Philip and Mary, and the 3d and 4th of William and Mary." The words of the former which are descriptive of the offence are, 'If any person shall maliciously counsel, hire, or command;' the latter retaineth the words counsel, hire, or command, and addeth others, 'shall comfort, aid, abet, and assist;' from these words, which, it must be admitted," (he proceeds,) "are descriptive of the offence, the prisoner's counsel," (that is in the case then before him,) "concluded that, without a personal immediate communication of counsels, intentions, and views from the supposed accessaries to the principals, there can be no accessory before the fact. But the judges are of opinion that whosoever procureth a felony to be committed, though it be by the intervention of a third person, is an accessory before the fact and within these statutes. For" (he adds) "what is there is the notion of commanding, hiring, concealing, aiding, or abetting, which may not be effected by the intervention of a third person, without any direct or immediate connection between the first mover and the actor." He then

cites several authorities, and refers to a variety of cases, and among others to Dalton, C. 161. S. 5. where the doctrine is more briefly set forth, and also to various proceedings against accessaries before the fact, all charging them as "procurers of the felony."

The conclusion, however, at which Mr. Justice Forster arrives, is this, "It is," he says, "a principle in law which can never be controverted, that "he who procureth a felony to be done is a felon," and he concludes by mentioning the difference between a principal and an accessary. "If present, "(that is at the perpetration of the offence) he is a "principal, if absent, an accessary before the fact." Now, gentlemen, let us for one moment refer to the testimony which has been given upon this trial, and see how far the prisoner at the bar, agreeably to this definition of an accessary before the fact, is guilty or innocent. Upon examining the evidence, if it appears to you in the same light that it does to the Court, we think you will find no testimony that goes the length of making him an accessary except before the fact according to law. If you believe in the existence of a conspiracy to take away the life of this man Keveny, but still apprehend that the utmost length the witnesses have gone, is to prove a tacit consent on the part of the prisoner, or perhaps a very culpable negligence in not preventing it taking place; then, gentlemen, it is my bounden duty to tell you, that though such conduct amounts to an offence, and is punishable as such, yet it does not make the prisoner an accessary before the fact. It is necessary to constitute the prisoner in the eye of the law an accessary before the fact, that it be proved that he, not merely did not prevent, as perhaps he might have done, (I am now speaking merely hypothetically) the murder being committed, but that he actually consented to its perpetration. It

will nevertheless be for you, gentlemen, to determine whether the evidence before you proves that he gave his consent, that he acquiesced in the murder being committed. It will be for you to say whether it has been a tacit acquiescence to its perpetration, manifested by a culpable negligence in not preventing, but without having excited it, or even given his heart's consent to its commission, or whether the crime was, instead of being a mere neglect to do a duty, proceeded in, on the contrary, from a wish for his death. Whether his silence resulted from malice; for then gentlemen, I am bound to tell you that, if you adopt that opinion, it is not merely an omission of duty, not merely a negligence, of which the prisoner will be guilty, but, if from malice, if, from a secret wish in his heart for the death of this man, he has abstained from preventing the murder, then, gentlemen, it is, I repeat, not merely a negligence in not preventing the murder, but it is a criminal abstaining, the result of malice aforethought, and the law, judging of offences by the *quo animo* wherewith they are committed, declares such a consenting to be an actual participation in the murder, and that the offender is as guilty, (though not present at the commission of the crime,) as the felon who actually takes the life. It amounts to that crime which Mr. justice Forster, in commenting on the act, or rather the case then before him, says. "It would be a reproach to the justice of the kingdom to suppose that he is not an accessory."

My Lord Hale, than whom no more respectable authority can be mentioned, maintains the same position, page 615 of his learned work he says, "Misprision of felony, is the *concealing* of a felony, which a man knows to have been committed, but never consented to, *for if he consented, he is either principal or accessory.*" Again, he says at the same

place ; “ An accessory before, is he that, being absented at the time of the felony being committed, doth yet procure, counsel, command, or abet, another to commit a felony.” It may be taken to be difficult to draw the distinction, and say when the jury shall determine that malice was in the heart, but in this case it must be done, as it is the intent of the mind which constitutes the crime. I will again hypothetically put a case. If the conversation, which has been represented by some of the witnesses to have taken place in the canoe, was heard by M’Lellan, without his bearing any ill-will to Keveny, if he neglected only to prevent the crime being committed, if, without malice, or ill intention towards Keveny, he neglected to give information of the design, then he would be guilty of concealment, but not an accessory, for it is the wicked design, the ill intention, which constitutes the crime. To come within the meaning of the law, he must have consented in his heart to the murder. But, gentlemen, he is not therefore entirely to escape, he has then been guilty of an offence which the law punishes, and sometimes severely too. The offence which, in that case he would have been guilty of, is a misprision of murder. But, gentlemen, if, on the other hand, as commanding officer of this canoe, he not only heard the conversation, but approving of it in his heart, he neglected, from a malicious intention, to prevent the crime, then, gentlemen, he is guilty of what he is accused of by the indictment. He is an accessory to the murder, and in law equally guilty, and liable to the same punishment, as the principal. Let me beg of you, gentlemen, not to mistake, by supposing I say this is the case of M’Lellan, I have no such idea, no such intention, it is you who are to judge of the intention, and decide whether there was malice in the heart. It is you who are to say

whether it was an omission to perform a duty, arising from no motive of malice or ill-will to the deceased, or whether he consented in his heart from malicious motives. This you are to say, and you only. It is what you have been sworn to do ; this is what you must do in passing your verdict.—It will perhaps shorten the case considerably if we first take up the law as applicable to the last part of the case—that of accessory *after* the fact—because, if you take the same view of the evidence as the Court does, we shall probably lay aside altogether that part of the accusation. It will be necessary to ascertain correctly what, in law, makes a man an accessory after the fact. An eminent law-writer very satisfactorily defines the various ways in which a person may become an accessory after the fact. Hawkins in his pleas of the Crown, says, “I take it to be settled at this day that whoever rescues a felon from an arrest for the felony, or voluntarily suffers him to escape, is an accessory to the felony. Also some have said that all those are in like manner guilty who oppose the apprehending of a felon.” Again he says, in another section, what does not constitute the offence of accessory. “It seems to be agreed that the suffering a felon to escape without arresting him, or the bare concealment of a felony, though they are crimes of a very high nature, do not make a man an accessory.”

In drawing your attention to the evidence on this point of accessory after the fact, it is my duty to state to you that there are some very peculiar circumstances in this case. It came out in the last part of the examination of the King’s commissioner, that there was no magistracy in the Indian Territory ; that the great, and, I believe, only, outlet from that Territory was in the possession of the Earl of Selkirk, that Fort William had been taken posses-



sion of by a forcible entry, to use the softest term, and the forcible detention, (as it was supposed to be,) was considered as hostile to the interests of the company of which the prisoner was a partner. It seems, I think, that he had a knowledge of the felony having been committed, and he brought De Reinhard to Lac la Pluie, whether with an intention to bring him to Fort William, and then to send him to Montreal, where he might have been tried, will be for you to determine. It will be for you to consider, whether the situation of affairs at Fort William was such as to frustrate such his intention. Upon the face of the testimony the Court does not see any thing that brings home the charge of accessory after the fact, it is solely, in our judgment, applicable to the allegation that he was accessory before the fact and to that part of the charge the evidence is of serious, very serious, importance. If therefore, gentlemen, you view the testimony in the light I have intimated to you that we do, it will be as well that we confine our attention to that single branch of the case. Is it proved that he was an accessory before the fact? Before dismissing the consideration of how far it has or has not been proved that he was an accessory after the fact, I will again take the liberty of drawing your attention to the authority of Hawkins, that you may clearly appreciate the distinction which the law makes between a negligent concealment of a felony, and the crime of being accessory after the fact. In discussing the question "what kind of receipt of a felon will make the receiver an accessory after the fact," he says, "it seems agreed that, generally, any assistance whatsoever given to one known to be a felon, in order to hinder his being apprehended, or tried, or suffering the punishment to which he is condemned, is a sufficient receipt for this purpose." So far gentle-

men, you perceive this writer goes all fours with what I have been addressing to you, as the principles of law by which your judgments are to be guided in arriving at a decision, on this branch of the accusation. Hawkins goes on to elucidate this position, "as where one assists him with a horse to ride away with, or with money or victuals to support him in his escape; or where one harbours or conceals in his house a felon under pursuit, by reason whereof the pursuers cannot find him, and much more when one harbours in his house and openly protects such a felon, by reason whereof the pursuers dare not take him." It is also laid down by a variety of authorities, "that all who, feloniously and with an evil mind, receive a felon are accessaries to the felony." Sir Edward Coke, in his "second institute," describes such to be accessaries, "who, knowing of a felony, receive the felon, and not only conceal his offence, but favour and aid him that he be not known." In his "third institute," he saith, "if one receive a thief, and aid and maintain him in his felony, he is an accessary." By which expressions it seems to be implied that there ought to be some other circumstance besides that of the bare suffering of a person known to be a felon to be in one's house, to make a man an accessary. In the present case, perhaps, it can not be disputed that a knowledge of the felony has been brought home to the prisoner, but the question will arise, is it that knowledge which amounts to more than a concealment. You probably will be of opinion with the Court that nothing beyond that has been proved. It may amount to a most culpable negligence, but is not, according to our idea, that aiding to escape which is necessary, according to the authorities which I have read to you, to constitute an individual an accessary after the fact. If, gentlemen,

I have formerly pointed out what I conceive to make against the prisoner, so I am now bound to tell you what we think makes for him. But let me again remind you that it is not what we say that is to regulate your opinion. You are not, gentlemen, to adopt the opinion of the Court, and to make it yours, because it comes from the bench. You are not to make up your opinion by my doctrine. Your verdict, gentlemen, is to be most emphatically your own verdict, and in forming it, you are to take the opinion of no man upon earth but your own. You are that country upon which the prisoner has put himself for his trial. It is you who have sworn duly to try him, and make a just deliverance between our Sovereign Lord the King and himself, and to do that you must fully and impartially deliver your own opinion, unfettered and uninfluenced by the sentiments of any man. I shall now briefly advert to the first point that presents itself in the present case, that is the point of jurisdiction. The indictment now under trial is founded upon the act of the 43d of the King, which extends the jurisdiction of the Courts of justice of the Provinces of Lower and Upper Canada to the trial and punishment of persons guilty of crimes and offences within certain parts of North America adjoining to the said Provinces. In the recent trial we had an opportunity to consider the boundaries of the two Provinces, as settled by the Royal Proclamation issued in consequence of the act of 1791. This proclamation declares the line which was to divide the Province of Quebec into the Provinces of Upper and Lower Canada, and states that "it is to ascend the Ottawas River into the Lake Temiscaming, and from the head of the said Lake by a line drawn due north, until it strikes the boundary line of Hudson's Bay," but adds (and the addition created great difficulty, and gave rise

to a solemn argument as to its correct construction,) "including all the territory to the westward and southward of such line, to the utmost extent of the country commonly called, or known by the name of Canada." We charged the jury, according to the light which we possessed, that the western and southern boundaries of Upper Canada, must be considered as the same with the western and southern boundaries of the Province of Quebec, and in this opinion the Court are unanimous, for I have lately consulted my learned brothers who sat with me on the late trials, and we concur in declaring that the western boundary of Upper Canada is a line drawn astronomically north, from the junction of the Ohio and Mississippi Rivers, till it strikes the southern boundary of the Hudson's Bay Territory, and we consider the point of departure, to be  $88^{\circ} 58'$  west longitude. As we, gentlemen, are bound to take from you all decisions upon questions of fact, so you are bound to receive from us decisions upon questions of law. Having given you our decision as to the limits of Upper Canada, and the line of separation between the United States and the two Provinces, it remains only for you to settle one point; are, or are not, the Dalles within those limits? That is a question completely with you. It is a matter of fact, and is exclusively your province to decide. I shall now call your attention to the evidence that has been produced, as it relates to locality, because by that will, indeed I might say, must, your judgment be guided, in deciding whether the Dalles are, or are not, without the lines which separate the United States and the Province of Upper Canada from the Indian Territories. Upon this subject, we have, first, the evidence of Mr. Coltman, who knows and has visited the spot. He tells us that "during the last year he passed through the Lake of the Woods into the river Winnipic, that the course of that riv.

"er is northerly, inclining a little west, and that he  
 "conceives the Dalles to be from twelve to, perhaps,  
 "twenty miles from the beginning of the river at the  
 "Lake of the Woods, and Mr. Coltman also states  
 "that he always considered and understood Portage  
 "des Rats to be the north westernmost point of the  
 "Lake of the Woods," and on this part of the ques-  
 "tion he concludes his evidence by saying, "a due  
 "west line from Portage des Rats would leave, as  
 "he thinks, the whole of the River Winnipic to  
 "the north of it." Mr. Bouchette's testimony cor-  
 "roborates that of Mr. Coltman as to the locality of  
 the Dalles, which are therefore stated to be situated  
 from twelve to fifteen leagues (miles) farther north  
 than the boundary line described. We therefore  
 think it right to tell you, (as we told the jury in  
 the late case,) that, if in examining the fact, you  
 find that the Dalles are to the north of a line drawn  
 due west from the most north western point of the  
 Lake of the Woods, then you are bound to say that  
 it is not in the United States of America, for whether  
 such a line would reach the Mississippi or not is of  
 no consequence to this trial, as a line drawn to that  
 river would have just the same effect. It re-  
 mains only to enquire; is it within the Province of  
 Upper Canada? As I abstain from reading more  
 evidence than I consider necessary to shew, and I  
 presume satisfy you on, the point to which I am di-  
 recting your attention, upon this branch of the  
 question, involving our jurisdiction, I shall read you  
 the testimony of Mr. Bouchette, which is exceed-  
 ingly clear as to the locality of the Dalles in refer-  
 ence to Upper Canada. Mr. Bouchette says, "from  
 "different authors and maps I am acquainted with  
 "the latitude of Portage des Rats. It is in 49°  
 "39' north latitude, and 94° 5' western longitude,  
 "calculating from the meridian of Greenwich."  
 He says further "that the western boundary of Ca-

"nada is a line drawn astronomically north from  
 "the junction of the Ohio and Mississippi Rivers to  
 "the Hudson's Bay Territory, and that such a line  
 "would leave the Lake of the Woods, and the river  
 "Winnipic, entirely to the west, about six leagues  
 "to the west." You have now, gentlemen, before  
 you the whole of the evidence on the subject of the  
 jurisdiction, and there can be no manner of doubt,  
 if you credit the testimony, that the Dalles are to  
 the north and west of these lines which we have, as  
 the expositors of the law, felt ourselves bound to  
 tell you, constitute the boundaries of Upper and  
 Lower Canada in relation to each other and to the  
 United States of America. This question will be  
 submitted to the decision of his Majesty in Council,  
 as it is only by his Majesty, with the assistance of  
 his Council, that the boundaries or limits of his ter-  
 ritories can be legitimately and permanently defined.  
 The question, however, having been incidentally  
 brought before us, we have been compelled to de-  
 clare the limits of Upper Canada. As judges of the  
 law, we have done that which we could not avoid,  
 and as the same authority which appoints you the  
 sole judges on matters of fact, constitutes us equally  
 so on points of law, we are bound to tell you that  
 our decision upon the law of the case must be your  
 guide, for, if on the one hand, we are bound to re-  
 ceive your decisions on matters of positive evidence,  
 so on the other, you are equally obligated to adopt  
 our decisions on points of law as your only guide.  
 If, ultimately, our judgment, or rather decision,  
 should be set aside, by the competent authority, any  
 inconvenience which may result from our erroneous  
 direction will assuredly be obviated, but at present  
 we feel it our duty thus to define the boundary  
 lines, and, comparing our decision with the evi-  
 dence which I have recapitulated, it is, I think, ap-

parent that the spot, "en haut des Dalles," is from eighteen to twenty miles beyond the American line, and from four to five leagues without the boundary of the Province of Upper Canada. Relative to the Lower Province it is unnecessary to say any thing. The locality, involving in it the question of jurisdiction, being thus disposed of, we shall now proceed to the consideration of the case itself; and the Court requests your most particular attention to that part of it which relates to the charge against the prisoner of being an accessory before the fact. The course I propose to pursue is precisely that which was taken in the last case. I shall first read to you the whole of the evidence without any comment whatsoever, so that you may have, clearly and distinctly, the whole of it before you, and after having so done, I shall endeavour to point out certain parts which, in the judgment of the Court, make against the prisoner; and also certain parts which make for the prisoner, and then, without further observation, shall leave the whole case to your ultimate decision.

*The Chief Justice read his notes of evidence, down to Hubert Faye's, (Page 27.) "Je ne connois pas si c'étoit Mons. Ducharme mais quelqu'un a demandé des gens des canots, &c."* Upon this part of the evidence, gentlemen, I just remark that this witness differs very materially from another, who was produced on the part of the Crown at a later period, and whose testimony, if believed, goes very strongly against the prisoner. I allude to Des Loges' evidence, (*Page 67.*) He represents that it was the prisoner who made these enquiries, while Faye, from the whole tenor of his testimony on this part of the case, as fully establishes that it was some other person, though he can not say who, because he repeatedly says that Mr. Archy, (as he calls the prisoner,) was there with them, but that he does not know

whether he heard what passed, which clearly manifested that, according to his statement, it was not M'Lellan who put the questions. I just notice this difference, as it occurred to my mind at the moment, repeating, at the same time, what I have before endeavoured to impress upon your minds, that it is merely our duty to point out to you whatever suggests itself to us as important in the evidence, but that it is with you, and with you only, that the decision between the credibility of opposing testimony rests. *The Chief Justice resumed, and continued the reading of the evidence to (Page 36.) "Avant de partir j'ai entendu Mons. Archy dire de mettre le petit canot en feu, &c."* The statement of the witness, on this part of the subject, differs considerably from that of his fellow voyageur La Pointe. This witness, Faye, says, when speaking of the prisoner having ordered the canoe to be burned, and in answer to an enquiry which was made as to the reason, "Il y avoit beaucoup de sang dans le canot, mais je ne sais pas pour quoi, et il (M'Lellan) n'a pas dit, pour quoi il falloit le bruler." La Pointe's testimony (page 47) confirms Faye as to the prisoner ordering the canoe to be burnt, but he goes on to say that at the time he assigned a reason for the order, and you will remember that La Pointe testified that Faye was present; his testimony is, "le prisonnier a dit en ma presence, 'faites bruler le canot,' et Faye y étoit avec les autres dans le campement, qui étoit de trente pieds carrés. Il étoit aussi près que moi, et le prisonnier parloit aussi haut que je parle. Il a dit de bruler le canot, parceque cela pourroit donner quelque connoissance aux sauvages, ou à quelque autre Canadien qui pourroit passer par là, du meurtre." Michel Martin, a witness examined on the part of the prisoner, gives a different account altogether to that of either of the



witnesses. He represents that a man, named Vasseur, said that he (Vasseur) must go and set fire to the little canoe, and that, though there, he heard no orders given to burn it. (See p. 115.) *The Chief Justice resumed the evidence and continued to* (page 48) "*Il n'étoit pas dans sa tente mais contre le feu et De Reinhard n'y étoit pas alors.*" Upon this subject of the papers said to have belonged to Keveny, there is a similar contradiction. Faye swears, (page 36) "*Il y avoit une valise avec des papiers laquelle De Reinhard ouvroit, et, examinant les papiers, il les jettoit dans la tente des bourgeois, où M'Lellan étoit,*" &c. This man, La Pointe, speaking of the same circumstance, gives a completely different account of it. His testimony is, that the papers "*ont été pris par le prisonnier dans la cassette, et M'Lellan l'a porté lui-même,*" &c. Martin contradicts this by saying, though there was a fire before the bourgeois' tent that night, that M'Lellan was not at it, nor does he know where he was. *The Chief Justice resumed the reading of the evidence, and proceeded to Martin's testimony,* (page 118,) "*Ayant quinze hommes dans le canot de Mons. M'Lellan, c'étoit impossible d'embarquer Keveny et son butin.*" This part of Martin's testimony in favour of the prisoner, by accounting for his not taking Mr. Keveny in his own canoe, is in strict accordance with the evidence of Faye, one of the principal witnesses on the part of the Crown, who said that it was assigned as a reason for not taking Keveny in the large canoe, that it was already too much loaded—*Having made this remark, his honour concluded the reading the evidence.*

This, gentlemen, is the whole of the evidence which has been produced, and it is not my intention to detain you by commenting upon it, but it is my duty to place before you the particular bearings.

which present themselves to the Court, as calculated to assist your judgments, in forming a correct decision, and, gentlemen, I repeat to you, what I have before said, it is merely to assist you, not to dictate to you, by any means, not in the smallest degree. The verdict is to be yours, as I am confident it will, (as it ought,) be a perfectly free and unbiassed verdict, perfectly uninfluenced by any thing that has or may fall from the Court, otherwise than, as I have before explained, it is entitled to require your adoption of its decision. The entire case, gentlemen, as it now presents itself to you, resolves itself into a question of credibility, and the guilt or innocence of the prisoner depends, as far as relates to the testimony which has been produced, upon the degree of credit you attach to three witnesses produced on the part of the Crown, viz. Faye, La Pointe and Les Loges. If, gentlemen, you believe them, that belief must, indisputably, lead to the conviction of the prisoner. The circumstances they swear to are, that the prisoner had the entire command of the party, that he was a partner of the North West Company, and the others being clerks and servants were consequently under his controul. This appears to be true, for it is not contradicted by any evidence on the part of the prisoner. They speak also of the conversation in the canoe, shewing from it a manifest predetermination to take the life of Keveny; this circumstance, but with some variation, is sworn to by all; they agree, however, in the main fact that a conversation relative to the killing of this man did take place in the hearing of the prisoner, and also that he participated in it to a certain extent. The circumstance of his receiving the sugar and appropriating it to his own use; his receiving the papers, examining them, keeping such as he thought advisable to keep, and burning the rest, or otherwise

making away with them, the burning of the little canoe by his own orders, and, as sworn to by one of the witnesses, for the avowed purpose of preventing it being seen by the Indians or Canadians who might come that way, for La Pointe distinctly swore that, at the time of giving orders to burn the canoe, he assigned as a reason, "que cela pourroit donner quelque connoissance aux Sauvages ou à quelque autre Canadien qui pourroit passer par là, du meurtre;" *du meurtre* were the words the prisoner used, according to the testimony of this witness, but you ought also to recollect that the other, Faye, says, equally positively, that the prisoner simply ordered it to be burned, but gave no reason whatever for so doing, and you should also remember that both Faye and La Pointe agreed that they were both present at the time when the order was given. This is a difference in the evidence on the part of the Crown, which we have done our duty when we have recommended to your notice, it is you, and you only, who are to decide on the credit due to the one or the other. The injunctions of the prisoner not to speak of the affair, is related by the witnesses with little variation, and, if credited, forms a strong circumstance against him. His expressions upon reading part of Keveny's papers in the canoe, "that it was well he was dead, as he had the power of getting troops to take their lands" (i. e. of the half-breeds,) "at Red River" (*Page 51.*) His reception of De Reinhard when he came without Keveny, his eating, sleeping, and journeying, with him, and manifesting, according to these witnesses, a general disposition to be friendly to him as before; all these, gentlemen, are strong circumstances against the prisoner at the bar: so much so that, if you credit the witnesses, it is the duty of this Court to say, that the Crown officers have made out their

case against the prisoner, and, notwithstanding these differences upon particular facts, you will feel obliged to render a verdict of guilty. But, to do that, you must believe the witnesses on the part of the prosecution, and discredit those in favour of the prisoner. To their evidence it is now my duty to request an equal share of your attention, as it goes to contradict in almost every particular, certainly in the most essential ones, the evidence of the principal witnesses for the Crown. And first, relative to Des Loges, whose testimony is so strong against the prisoner, he stated, if you recollect, gentlemen, that in 1816 he was in the Indian country, with one Colishe Ducharme, that they were in the same brigade, and that, going to Swan River, they met the prisoner, and he then went on to relate a conversation which he swore took place between them. On the part of the prisoner, this man Nicholas Ducharme, (commonly known in that country by the name of Colishe,) is the first witness called, (Page 81.) and he says positively, that no such conversation did take place, and that all which passed between him and the prisoner was an enquiry as to the length of time since he had left the Grand Portage, and his own answer, that owing to contrary winds he had been a long time on the journey or voyage. A number of questions were put to him, in which different parts of the conversation related by Des Loges were embraced, and to which he most positively gave a denial, contradicting *in toto* the whole, that this Poirier dit Des Loges had sworn to, with the single exception of the fact that they did meet the prisoner in going to Swan River; in no other part of their testimony do they agree. Therefore, gentlemen, between this contradictory testimony it is for you to decide; the Court would be assuming to itself a part of your prerogative were it to give an

opinion upon it. You must hold the balance, and impartially weigh the various and extremely contradictory parts of the evidence, and, according to your conviction, credit or reject the testimony of the witnesses. The only assistance a jury can have in forming a just decision upon contradictory testimony, is the characters of the individuals who give it, and in the present instance you have had evidence produced as to the character of these two men, Ducharme and Des Loges. Two persons of great respectability, one of whom has known him for twenty years, say the old man, Ducharme, bears a most excellent character, whilst three witnesses give Des Loges one of the most infamous description, asserting generally that they do not consider him entitled to credit upon his oath, and that they would not believe him on his oath. If, gentlemen, you believe Ducharme, there is not only an end to Des Loges testimony, but also to Faye and La Pointe's, for a great part of what they gave evidence to, is contradicted by Ducharme. La Pointe you will recollect swore that upon the answer of the Swan River people that sometimes Keveny stole, and sometimes he bought, the half-breeds set up a shout of joy, saying, "il ne volera pas plus long tems." (Page 45.) Ducharme swears positively the reverse, that there was no shout of joy amongst the people of the prisoner's canoe, nor any at all. Faye also relates a conversation which is contradicted by Ducharme. It may be proper here to remark that the stories of the two men differing so widely, and the character of Des Loges being intended to be attacked, the gentlemen who conducted the defence, desired that Poirier dit Des Loges might be brought into Court, to let Ducharme declare whether the witness on the part of the Crown was the person of whom he had been speaking. Des Loges coming

into Court was declared by Ducharme to be the person whom he had meant, and whom he had contradicted, in the most solemn manner, in almost every particular to which he had sworn. I will refer you, gentlemen, to the testimony of Ducharme, because, if you believe him, you must throw on one side the whole of Des Loges evidence, and the greater part of Faye and La Pointe's. Being asked, (*Page 82*) whether during the time they were in company with the brigade from Swan River, M'Lellan said any thing and what? He answered, "Il ne parloit pas un mot pendant tout le tems que j'étois là. Il ne m'a aucunement parlé de Keveny, pas un mot, ni au train." He also, in answer to a question, whether if the prisoner had said any thing it would not, as he was guide, have been to him, said, it certainly would, but that M'Lellan did not say a single word about Keveny; he added that a half-breed made some enquiry whether witness had seen Keveny, and that he had told him, yes, he had seen him above the Dalles. He was again asked by Mr. Vanfelson; "Dans le tems que votre brigade a rencontré le canot de Mons. M'Lellan, a-t-il demandé à vous, Colishe, si vous aviez eu connoissance en chemin de Mons. Keveny, et y avez vous répondu, et qu'est ce que vous avez dit." He replied, "Non, Mons. Archy ne m'en a demandé rien, ni m'a parlé, de Keveny." Again being asked, "Si Mons. Archy, le prisonnier, l'a demandé, comment Keveny fesoit pour vivre, et s'il a répondu—que quelquefois il vole, et quelquefois il achete," he again answered, "Non, point de tout, ni l'un ni l'autre." A third question was put in the same manner, whether, (upon the answer which he, in his last reply had denied having been made at all,) he heard M'Lellan say, "Hé bien, c'est bon; il ne volera pas long-tems, demain à ces heures son

“affaire sera faite?” to which he replied in the same manner—“Non point de tout.” These direct contradictions to Des Loges’ evidence, if credited by you, must of course completely do it away, and as they are also opposed to the statements of Faye and La Pointe in various particulars, will have a similar effect upon their testimony—But, gentlemen, the Court give no opinion upon the subject, it is entirely left to you to decide where the preponderance of credibility attaches itself. All the Court wishes, and all it will do, is to point out the striking parts of the evidence to your notice, and then leave it to your decision. It is, however, impossible, if you believe Ducharme, that you can for a moment entertain Des Loges’ testimony. Relative to the effect it will have upon the two Canadians’ evidence, the Court can not but remark that they appeared to feel as if they yet recollected the *coups de baton* by their referring to it so frequently, and it will be for you to say whether that circumstance may have had any, and what, influence upon their testimony, but their very frequent reference to the circumstance proves that it has made a very strong impression upon their minds. You will consider whether it is of a nature calculated to bias their evidence. Another circumstance, which you can not but have noticed, relative to these two men, is that they never recollect the person who said this, that, or the other, nor the place where they were at the time they relate a transaction to have occurred, though they are so very minute in their narrative of particulars, and this forgetfulness is on points which it might be supposed they would particularly remember as being connected with their own occupation. But, whilst on parts of transactions which it would not be surprising if recollection failed them, they are exceedingly positive, of others which it would be more

natural that they should remember, the particulars appear to have escaped their own memory, or they swear that they never occurred, in which they are contradicted by other evidence. There are also many parts of the story in which they do not agree with one another; thus, for instance, relative to the loaf of white sugar. Faye swears, (*Page 36.*) that De Reinhard put it into M'Lellan's basket, and that he saw him do so, whilst La Pointe states (*Page 47.*) that he saw a bois brulé or half-breed put it in the tent of M'Lellan. In their account of the destruction of the papers alleged to have belonged to the deceased they equally differ. Faye's statement is (*Page 36.*) that there was a trunk containing papers which was opened by De Reinhard, and, examining the papers, he threw them into the bourgeois' tent, where M'Lellan stayed, who read them, and tore and burnt them there. La Pointe gives altogether a different account of this part of the transaction. In the first place he says they were read and burnt at the engage's fire; that they were not taken out of the cassette by De Reinhard, but were brought by the prisoner himself to the fire of the engage's in the trunk or cassette, and not by De Reinhard, and what is most singular, that De Reinhard was not there at all. These striking differences in their testimony will be sufficient perhaps to shake your confidence in either, if not perhaps to destroy their testimony altogether. The Court however gives no opinion upon the credibility of it; it is your own unbiassed decision, which must regulate your verdict, but it is our duty to notice to you equally the favourable and unfavourable parts of the testimony, and in so doing I must now observe, independently of the differences between their own statements, that the oath of Michel Martin goes to contradict them at almost every point. Relative to



the conversation in the canoe, it was sworn by another witness that the noise of paddling is so great, that it is almost impossible to hear from one end to the other of a canoe, and Martin positively swears that he was on the first bar, immediately close to the bourgeois, from the moment in which they met with José, to their meeting with the Swan River people, and afterwards all the time between the gentlemen and Faye and La Pointe, who were next to the steersman, whose place you know, gentlemen, is at the end of a canoe, and that he never heard any word of killing Keveny, either before or after the meeting the brigade, nor during the time that they were in company together, and that, after parting with the Swan River people, he did not even hear his name mentioned. On Martin's cross examination he was particularly asked whether the prisoner shewed any paper to De Reinhard, and observed to him, or to any other person, that it was well that Keveny was killed, because he had the power of getting King's troops to take away the lands at Red River, and he swears equally positively that he heard nothing of the kind. It will be your duty to weigh well this contradictory, this directly opposing, evidence. You will recollect also that the two Canadians swore that they were commanded not to speak of this affair, though they each assign a different person as giving the injunction. Faye says that it was from De Reinhard he received his directions. La Pointe asserts it was the prisoner who told him not to speak of this murder, and that he did so both before starting and several times afterwards on the way. Martin swears positively that the prisoner did not open his mouth on the subject of Keveny. It is not for us to decide which of the two is entitled to belief; they are directly opposed to each other, and you must determine which you will credit.

There are some minor points in which a contrariety of testimony exists, but it is perfectly unnecessary to detain you by referring to them. More contradictory evidence never came into a Court of justice, indeed there is not one fact of any importance in which the evidence on the two sides is not almost diametrically opposite, and between them you are to decide. There is another point which we feel bound to notice to you ; the prisoner has shewn that he could not, in that wild country, owing to its peculiar circumstances, bring that evidence of his innocence which he wished ; he also proved that he placed some reliance upon persons who were brought down being produced as witnesses on the part of the Crown, but who were afterwards indicted or removed from him. It will be for you to say whether this evidence does not explain what before appeared to be dubious, and account, in a great degree, for his not producing before you more positive testimony as to his conduct. There is another circumstance which it is right I should advert to. The Crown officers, with very great propriety, shewed that Mr. Keveny was sent away from Bas de la Rivière in the custody of five bois brulés, intending, as was evident from the tenor of their questions, that you should infer that Keveny was not treated with that kindness which it was endeavoured to establish on the defence. To rebut such an impression Mr. Crebassa is asked, whether at that time there were any persons excepting bois brulés at Bas de la Rivière, and he answers that, excepting two old Canadians accustomed to work about the garden, there were not, and that, consequently, he was obliged to be sent by bois brulés. So far that is explained completely. They had no right to keep him at Bas de la Rivière, they were bound to send him to Lower Canada, and the circumstance of his being put in charge of bois

brulés was unavoidable. Relative to the prisoner following Keveny, he says the reason was because he had heard of the capture of Fort William, which was not known at the time Keveny was sent away. When this information was received at Bas de la Rivière I think he must have known of Keveny having been turned over to the two Canadian lads, and the Indian José, though it is not in evidence that he did, but the circumstance of his being detained, owing to the quarrel of these people, certainly could not have been in his own knowledge. The prisoner's account of meeting him is that he came upon him accidentally, and takes him up that he might be forwarded on to this province. The reason of his going in the little canoe, if you believe Martin, is because it was impossible he could go in the large one from its being already overloaded, indeed the evidence on the part of the Crown, though it goes the length of saying that he might have been taken in the canoe of the prisoner, yet says that he would not have found himself *à son aise*."

These circumstances seem to explain those which appear unfavourable to the prisoner down to that period ; down to the time of this parting with Keveny the last time that he was seen alive. It only remains to notice the evidence as to the conduct of the prisoner after the time when, I think it can not be doubted but, the fact of the murder was within his knowledge. Faye and La Pointe concur in representing that the prisoner treated De Reinhard in every particular as before, that they eat, drank and slept together, as usual, and that they saw no difference. Martin says certainly they did eat and drink together, yet that he saw a difference in Mr. M'Leffan, and that he did not look upon him in the same light as he had formerly done. Some enquiry was also made as to the possibility of this sort of in-

tercourse being avoided, which you will doubtless recollect, and give to it what weight you think proper. The Court, gentlemen, will make no conclusions as to these very contradictory and extraordinary statements. Our duty is merely to put them before you, and this we have done, on the one side and on the other, to the end that you may correctly apply each part of the evidence to the point of the case on which it bears, and when you have maturely and conscientiously considered it, in all its bearings, that you may satisfactorily and conscientiously say whether Archibald M'Lellan, the prisoner at the bar, is guilty or not guilty.

*The Jury then retired, and in about ten minutes returned, saying that they had agreed in their verdict which was to be delivered by Mr. Measam.*

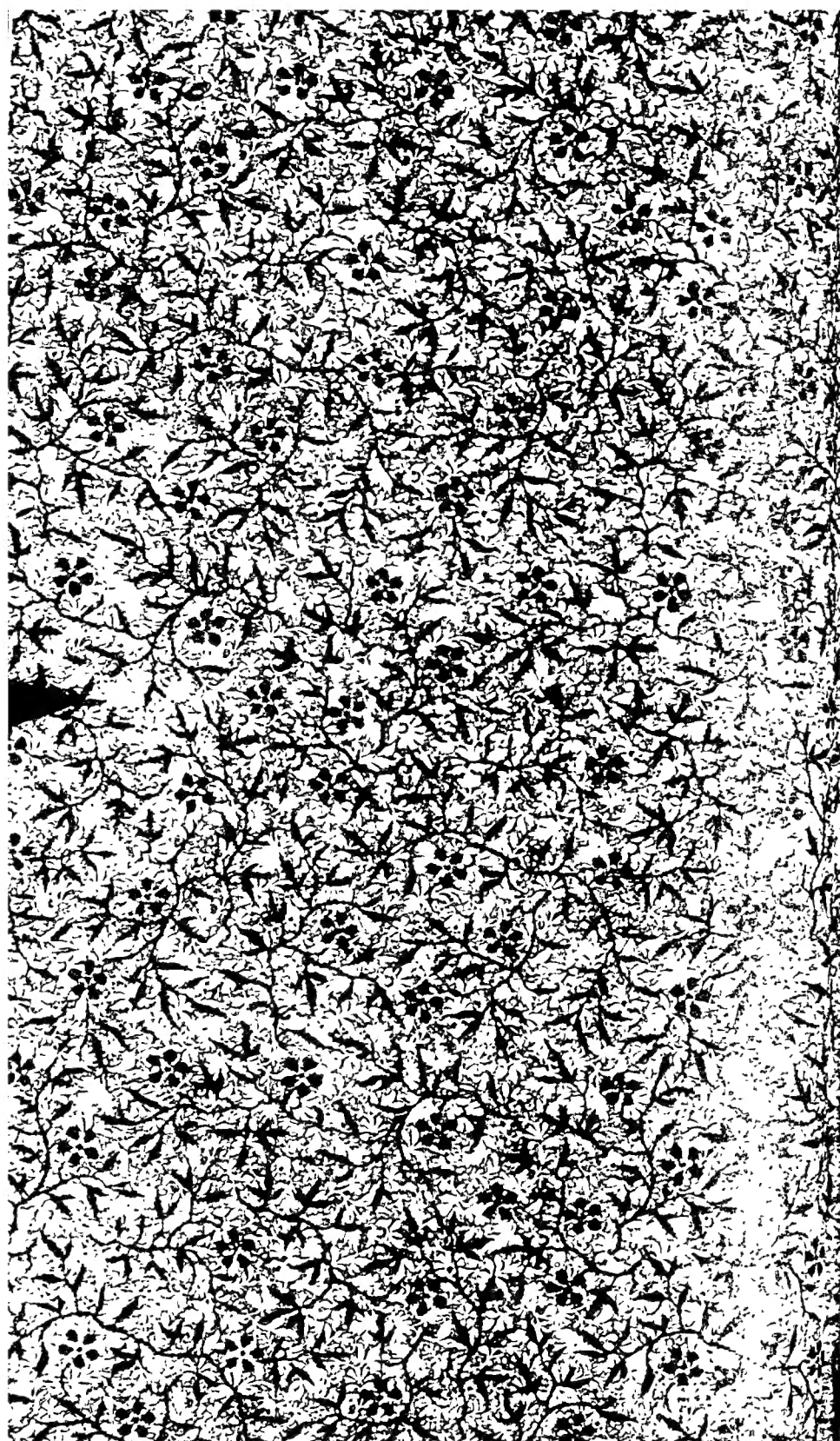
*Clerk of the Crown.*—How say you, is Archibald M'Lellan, the prisoner at the bar, guilty of the felony and murder whereof he stands indicted, or not guilty?

*Mr. Measam.*—NOT GUILTY :

*The verdict was formally recorded. The Jury assented to the record, and the Chief Justice, having thanked them for their attention, they were discharged.*

*The Attorney General stated to the Court that he had other matters against Mr. M'Lellan, one of which was a charge of being an accessory after the fact, to the murder of Governor Semple, and Mr. M'Lellan, giving satisfactory bail to appear to answer to the charge, was then liberated.*

FINIS.



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